SUPREME COURT OF THE UNITED STATES.

No. 74.

THOMAS MANEY, ROBERT P. CURRIN, WM. MANEY, AND WM. L. MURFREE, PLAINTIFFS IN ERROR,

vs.

THOMAS J. PORTER.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS FOR THE STATE OF TENNESSEE.

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STATE OF TENNESSEE, *sc:*

Be it remembered, that a transcript of the record in the case of Thomas Maney against Thomas J. Porter, from the chancery court at Franklin, was filed in the office of the clerk and master of the supreme court of errors and appeals, at Nashville on the sixth day of October, A. D. 1841, in the words and figures following, to wit:

STATE OF TENNESSEE, *ss:*

At a court of chancery began and held at Franklin, for the district composed of the counties of Davidson and Williamson, on the 3d Monday, being the 19th day of April, A. D. 1841. Present, honorable Lunsford M. Bramlitt, chancellor of the middle division of said State.

THOMAS MANEY, *complainant,*
vs.
THOMAS J. PORTER, *defendant.* } In Equity.

Be it remembered, that on the 29th day of April, 1839, a bill of complaint was filed in this honorable court, which is in the words and figures following, to wit:

To the honorable L. M. Bramlet, chancellor of the middle division of the State of Tennessee, holding the chancery court at Franklin.

The bill of complaint of Thomas Maney, of the county of Williamson, complainant, against Thomas J. Porter, of the county of Maury, defendant: humbly complaining, sheweth to your honor your orator, said Thomas Maney, that some time about the 1st of December, 1835, your orator left his plantation in Carroll county, in the State of Mississippi, with the view of examining some of the public lands, then advertised to be sold in said month of December, at the town of Chocchuma, in said State; that on his way he happened to pass a night at the same house with some acquaintances from Tennessee, who informed your orator they had been at Columbus, where land sales had been advertised to take place shortly before, and that but a small portion of the land advertised had been offered, by reason of claims which had been made to it. They also informed your orator, that in all probability but little of the land, advertised to be sold at Chocchuma, would be offered in consequence of those claims. Your orator thinks, this was the first time he had heard much, if any thing, about these claims, and was solicitous to be fully informed, especially of the probability of their stopping the sale of the lands he was about to view. Your orator was informed by one or both of the acquaintances to whom he alludes, that they travelled for Columbus, with the defendant Thomas J. Porter; that said Porter probably staid that night at a house in the neighborhood; that he was interested in the claims opposed to the public sales, or which would interfere with them, and would give your orator more

full information on the subject; your orator went accordingly early next morning to the house to which he was directed, and found the defendant, who told your orator he need not go to examine the land, for that it had been covered for the most part by the claims in question, and that little or none of it would be offered for sale; your orator thereupon returned to his plantation, but some few days afterwards, upon reflecting upon the matter, concluded to go, and did examine some of the lands advertised, and attended the sales at Chocchuma. It turned out that a very small portion of the lands advertised were offered for sale, much the larger portion being reserved from sale, as was understood, by reason of said claims, since more generally known by the name of "Choctaw Floats." Your orator made no purchase at said sales, unless the entry of these rights may be so considered; he found there the defendant, who was one of the very few persons there whom your orator knew, and the only one of them that appeared to have much knowledge of the nature of said claims which had caused so much disappointment; he appeared to have a great deal. Your orator had known the defendant several years as the acting clerk of the county court of Maury, which your orator had been in the habit of attending, and no unpleasant feeling had at any time existed between them, so far as your orator remembers; but, on the contrary, he remembers some small mutual acts of kindness. Your orator conversed freely with the defendant at Chocchuma, and advised with him particularly about said Choctaw claims, with which defendant appeared to be, and no doubt was, well informed. He informed your orator, they arose out of the 14th article, as well as your orator remembers, of the treaty of Dancing Rabbit, and represented them, at least the greater part of them, as just and fair claims, which would in all probability be recognised by Government; and if they should fail in Congress, could and would be enforced in the Federal courts. Your orator having heard from a gentleman at the sales, that one Willie Davis had some of those claims, which he would probably sell on good terms, enquired of the defendant about Davis and his claim, and was advised by him not to purchase from Davis. Your orator remembers also to have enquired from defendant the probability of making an advantageous purchase from Doc'r Gwinn, and was told by him, that Gwinn was under pledge to sell no more; the defendant stated to your orator, that if your orator felt disposed to purchase, he could give your orator an advantageous bargain; that he held the obligations of Doct. Gwinn for 15 sections, and of Fisher, of North Carolina, for 10 sections; that his claims had the priority of all other sales of Fisher and Gwinn, and that if, of all the claims purchased by them, there were but the 25 sections saved, he would be entitled to them; that these, and many more, would be good, there could be little or no doubt; that he would sell your orator an undivided half of these 25 sections, at $800 per section; that he was originally entitled to a certain interest in the purchases, and concluded to take these 25 sections, as being more secure than a general interest in the whole. Your orator and defendant had much conversation on the subject, the whole of

which your orator cannot at this distance of time undertake to state. Your orator, however, did not purchase at this time, but returned home to his plantation. Some days after, and about the 16th of December, 1835, your orator having some occasion to visit Tehula, set out, and concluded to go by defendant's plantation, which he understood was not very much out of the way, and which, he thinks, he had been invited by defendant to do so. Your orator staid at defendant's plantation that night, and the conversation about the claims was again renewed. Your orator cannot distinctly separate all the conversation between the parties, nor the representations of the defendant in regard to the claims at Chocchuma, and those at the plantation, nor does he suppose it can be very material to do so; but on one or both of those occasions, he represented to your orator, that the claims were certainly good, and that there was every probability of their speedy adjustment by Government; that a bill for that purpose was before the last session of Congress, passed the Senate, and would have passed the House of Representatives, but for the obstinacy of one member, who objected to dispensing with the rules of the House; that if it had been reached, it would certainly have passed. That the bill stood first or second on the calendar, and would no doubt be passed into a law at the next session. That the bill was all that could be desired by the claimants; that the claims were well located, and the lands valuable, and worth, as well as your orator remembers, an average of ten dollars per acre; that he had been attending at Washington city to those claims, and should continue to attend to them; that he should shortly go to Washington for that purpose; that some of the distinguished men in Congress were in favor of them. Mr. Clay would support them; that Mr. Webster's opinion had been taken, and was in their favor.

Your orator thinks, defendant mentioned the names of other distinguished members, as friendly to the bill, whose names your orator does not now remember with certainty, but thinks that of Judge White, of Tennessee, was among them; that he had been offered $12,000 for the interest he proposed to sell your orator, by Col. Richardson, a merchant of Tehula, and could then get it. That he wanted your orator to make something, and that he was therefore induced to make the offer to your orator he had, at $10,000. And also, that if the claims succeeded, he had made enough any way, that he did not intend to sell the other half; that your orator would have nothing more to pay towards securing the land, that he should attend to the claims throughout; that if Congress did not provide for them, they would bring suit in the Federal court; that if Congress made pecuniary satisfaction to the Indians, there would be no difficulty in getting the Indians to comply with their contracts with Gwinn & Fisher, without whose assistance the Indians could not have obtained their rights. Your orator felt much confidence in the representations, and in the information of the defendant on all these subjects; as, also, in his ability to manage the claims to the best advantage; and also, in his good feelings towards your orator; and in that confidence, on the 17th day of December, 1835, your orator agreed to take an undivided half of the 25 sections above mentioned, at the price of $10,000, and

executed his two notes under seal to the defendant, for $5,000 each, payable in bank, bearing date on the 17th December, 1835, one payable 12 months after date, and the other 2 years after date. The defendant at the same time executed a conveyance under seal to your orator of an undivided half of said 25 sections, a copy of which conveyance is herewith filed, marked A, and which your orator prays may be taken as a part of this his bill. Such was the confident manner of the defendant in speaking of these claims, and his apparent disposition to serve your orator, that your orator felt persuaded he had a fair prospect of realizing a considerable profit, and his good feelings towards the defendant were considerably increased. Your orator had no conversation of any consequence with any other, that he remembers, on the subject of his trade, until his return to Tennessee, some weeks after, when he was surprised to learn from a friend, that he had been offered by said Willie Davis, and perhaps others, a few days only before said purchase, and about the commencement of said land sales, at Chocchuma, Choctaw claims at 62½ cents per acre, and which he had declined taking. Shortly after his return, too, your orator observed from the newspapers, that the subject of those claims was before Congress, and that the purchasers from the Indians were denounced in strong terms; and particularly *by* Mr. Webster, Mr. Clay, and Judge White, as well as your orator remembers, appeared from their reported speeches decidedly opposed to them. Your orator saw the defendant again, for the first time after the trade, about the middle of March, 1836, on his way, as he informed your orator, to Washington city. Your orator then requested and urged the defendant to cancel the trade; stated to him, as well as he remembers, the reduced price at which claims had been offered to his friend; and that delay in the settlement of the claims which seemed inevitable, would be ruinous to your orator, and disable him from meeting his notes, without sale of his property. Defendant replied, that he has but just returned from the South, and knew nothing of what was done in Congress; thought your orator was unnecessarily alarmed; could not then agree to cancel, but would see more about it, and would write to your orator; your orator enquired, whether he still owned the other half of the 25 sections. Defendant answered that he did not. Your orator asked *at* what price he got for it; the defendant seemed unwilling to state the price, and in fact did not state it to your orator, but appeared to evade it by saying, he traded it to, or let some relation have it. This information, of course, increased your orator's apprehensions, relying very much, as he did, upon the fact of the defendant's joint interest with your orator, and upon the defendant's knowledge of the business, his influence with Gwinn & Fisher, and his ability to manage the matter to advantage.

Your orator told said defendant, that he was unacquainted with Gwinn & Fisher, and felt much less secure, by defendant's parting with his interest. Defendant replied, that Gwinn & Fisher were good, and might be confidently relied on; that he would undertake for it; that he would cause Gwinn to execute any paper that might be necessary to your orator's safety; that if Congress paid the Indians money, instead of lands,

he would see that your orator got it. Your orator recollects suggesting the possibility of defendant's death; to which defendant replied, that in that event, your orator should not loose it, that he would provide for it. In the course of the conversation, the defendant said, the loss should not fall on your orator, and that he would write to your orator, and that your orator should be satisfied. The defendant further stated, that if a commissioner should be appointed, (to sit upon the claims,) he would take them back; that he would not put the notes in bank, and never intended to do so. Your orator supposes that defendant did go to Washington, but your orator received no letter from him. Your orator had other conversations with the defendant afterwards, and on or about the 4th day of October, 1836, the defendant took back one-half of the claims by him conveyed to your orator, upon your orator's executing his note to him under seal for $5,000, payable at the Union Bank of Tennessee, at Nashville, eight months after date, and dated said 4th of October, 1836, which note and conveyance your orator accordingly executed, and copies of which your orator will produce as this honorable court may direct.

Your orator states that this interview took place, and the business was transacted, in a chamber of Robinson's hotel, in the town of Franklin, at night, and no person was present, but the defendant and your orator. Your orator expressly charges, that at that time he asked the defendant whether he was willing that the same understanding should continue in regard to the defendant's taking back the claims, in the event of the appointment of a commissioner; to which defendant replied that he was. Your orator at that time would have greatly preferred a rescision of the whole contract, which he had repeatedly requested, but the defendant would not consent to it. And your orator accepted this last arrangement as the best terms he could make. This arrangement was the result of a conversation had some days before in Nashville, your orator thinks. Your orator remembers remarking to the defendant, when making the arrangements at Robinson's, that as defendant took back half the claims, the time of payment ought also to be divided, which would have made the note fall due some days later but the defendent objected, and your orator accordingly executed the note as above. Your orator charges, that in their previous conversations, the defendant had frequently spoken of the appointment of a commission, as highly auspicious to the success of the claims, as placing them beyond any reasonable doubt, and had said, that in that event the claims would be worth much more than your orator was to give. This last note of your orators for $5,000 fell due of course on 4 and 7th of June, 1837, and bears several indorsements, a copy of which note and indorsements are herewith filed, marked B, and prayed to be taken as part of this bill.

Your orator further states, that at the session of Congress, begun in December, 1836, an act was passed, as he is informed and believes, authorizing the appointment of a commission to act upon the Choctaw claims, of which those in question are part; and that commissioners were accordingly appointed, and have been actually engaged in their duties; but what progress they have made, or what will be the issue of

their labor, your orator is uninformed. Your orator was informed by Andrew Hays, esq., who represented some of the Choctaw claims, that the act of Congress was satisfactory to him. Your orator further states, that on the 19th April, 1837, he addressed a letter to the defendant, in substance, if not in the words following, to wit:

"FRANKLIN, 19*th April*, 1837.

"Gen'l T. J. PORTER.

"Dear sir: Since the appointment of the commission on the Choctaw claims, I have made enquiries, but have not been able to find where a letter would find you. I find myself unable to meet the note of $5,000, and prefer surrendering the claims, according to our understanding, in the event of the appointment of the commission. I address to Columbia, thinking my letter will be more likely to find you there, at an earlier period, than at any other point. Please let me hear from you so soon as you receive it.

Respectfully, your obedient servant,
THOMAS MANEY."

This letter was deposited in the post office, directed to the defendant at Columbia, and your orator has no doubt was received by the defendant, but your orator received no answer to it. Your orator further states, that some time in the spring, he thinks of 1837, he happened to be in Nashville, and was told in the street by H. R. W. Hill, that he had seen a note of your orators for $5,000 sold, (your orator thinks was the expression used,) by which, upon enquiry, your orator supposes, he meant discounted at the Union Bank. Your orator had no other note out, answering at all the description of this, and had no doubt at once of its being the same. Your orator stated to said Hill the nature of the transaction, that he was not prepared to meet the note, and that he was ready and willing to surrender the claims, the event having occurred, (namely, the appointment of the commission,) on the happening of which the defendant had promised to take them back. Said Hill stated that he had been consulted about the note, and that it was probably taken by the bank upon his representation of your orator's ability to pay it, and that, perhaps, he ought to state the circumstances at bank. Your orator assented to his doing so, and said Hill afterwards informed your orator he had made the statement, and that the note was rejected. Your orator states, that some time after this, and in May, he thinks, 1837, he saw the defendant in Nashville, and spoke to him on the subject of their business. The defendant appeared for the first time, when your orator mentioned the business, to be offended, and used some offensive expressions, on the ground of your orators having said, (as he had understood,) that the *consideration* of the note had failed, and that he had been subjected to much inconvenience in taking it up from Mr. Vanwyck. Your orator stated to him in substance what he had stated as above set forth to Mr. Hill, and referred him to Mr. Hill. Our conversation was interrupted, before we had gotten through, by some gentlemen who wished to speak to each of us, but the defendant did not then deny that

he had agreed to rescind the contract upon the appointment of a commission. A short time after this, and on the same evening, your orator again saw the defendant, and requested to speak with him, when they walked a little from the crowd, and your orator enquired if he had not heard of the appointment of the commission, or something to that effect. The defendant replied that he had just returned from the south, had barely heard from some one that they had been appointed, but had no satisfactory information on the subject. Your orator, in that conversation, asked the defendant if he did not recollect the understanding between us, that he would take back the claims in the event of the appointment of a commission; the defendant replied, in substance, and your orator believes, in the words "not if the commission is of no account." Your orator thinks he stated the fact of Mr. Hay's being satisfied with the act of Congress; that he, your orator, had written to defendant on the subject, and that he mentioned the names of two of the commissioners appointed under the act, the third having at that time escaped his memory. Your orator expressed his willingness to await until defendant could inform himself on the subject.

Your orator expressly charges, that the defendant did not, upon that, or upon any other occasion, deny to him that he had agreed, in the event of the appointment of a commission, to take back the claims. And your orator further charges, that the defendant did not, when he assented to the continuance of that agreement, on the night of the execution of the bond for $5,000, qualify that assent by any condition of the commission being "*of account*," or any other condition, that your orator has the least recollection of. Your orator further charges, that there was no qualification to the defendant's first promise to take back the claims in event of the appointment of a commission. Your orator further states, that he has conversed with said Andrew Hays, esq., on this subject, and he inferred from said Hay's conversation, that he was far from thinking, either the act of Congress, or the appointment under it, of no account, but, on the contrary, he appeared satisfied with both.

Your orator understands that those Choctaw claims have arisen under some article, probably the 14th, of the treaty of Dancing Rabbitt, by which such of the Indians, as should signify to an agent of Government, within a certain period, their wish to remain in the country, should be entitled to certain reservations of land, upon which, if they continued to reside for the space of five years, they should have a fee simple title. That many of the Choctaws did report themselves to the agent for that purpose; that the agent was drunken, and failed, or refused, to register the names of many who did actually apply for that purpose; that he reported to Government but a small part of those who had, or supposed they had, done what was necessary to entitle them to their reservation; that consequently the lands of many who intended to remain were sold by Government; that said Doct. Gwin and Fisher had made contracts with many of the Indians, some, perhaps, whose land had been sold, and some, probably, who retained possession, but appre-

hended the loss of theirs, (but of this your orator is not well informed,) by which they undertook to secure their reservations to the Indians; in consideration of which service, the Indians were to give them, in most instances, one-half of the land secured, and in some instances, perhaps, more. Your orator cannot pretend to state with precision the origin of those claims, or the value of the contract of P. Gwinn or Fisher with the Indians, but supposes the defendant is furnished with the subject, and prays he may answer fully concerning them. Your orator further states to your honor, that he has never yet received any thing either in land or money from those claims, and is apprehensive that he never shall; that he was informed by said Hays, that said Gwin and Fisher, one or both of them, had sold all, or nearly all, their interest in said claims. And your orator is seriously apprehensive, that even if the claims should be finally allowed to the Indians, and secured to the purchasers from them, he would be compelled, before he could obtain possession of the land, to institute suits in chancery, and perhaps in law, in the State of Mississippi; the vexation and expense of which would probably equal, and perhaps outweigh, the prospect of final success.

Your orator further states, after the last mentioned conversation with the defendant in Nashville, as appears by an indorsement on said note, the defendant transferred said note to one William McNeille on 1st June, 1837. But your orator charges, that this was not an absolute transfer for valuable consideration, but for the purpose, at least in part, of having the amount collected. Your orator states, that he wrote to said McNeille, and had a conversation with him on the subject, and prays the said defendant may answer fully in regard to said transfer, its consideration, and objects. Your orator is informed and believes, that said note was protested for non-payment on the 7th day of June, 1837. Your orator looked upon this, together with the transfer to McNeille, as unequivocal evidence of the intentions of the defendant, and he does not recollect to have written or spoken to him on the subject since. Some time about the first of November, 1817, a writ was served on your orator, in the name of said defendant, founded on said note, returnable to the November term of the Williamson circuit court; that at March term, 1838, judgment was rendered in said case in favor of said Thos. J. Porter, against your orator for $5,000 debt, and 239 50 damages; from which your orator prayed an appeal to the Supreme Court, which was granted, upon his entering into bond with R. J. Currans and Wm. Maney as his securities; that at the last term of the Supreme Court, judgment was affirmed against your orator and his securities for the sum of $5,703 79 cents, on the 11th Dec'r, 1838, and for the further sum of $17 41½ costs of suit; judgment was also given; that Thomas J. Porter has caused a writ of fieri facias to issue on said judgment of the Supreme Court, directed to the sheriff of Williamson county, who, in obedience thereto, will execute and sell the property of your orator and his securities, without the interposition of this hon'ble court. Your orator further states, that upon the writ in said cause being served upon him, he wrote to Mr. S. D. Frierson, of Columbia, the attorney of said Por-

ter, on or about the 4th of November, 1837, in substance, if not in the words following: "I must think the claim you have on me can be better arranged than by a suit at law and equity, (my defence, I think a good one, being in equity.) I am willing to submit the case to any one or two competent persons, to be decided upon principles of law and equity, or of common justice; or if I can dispose of the claims for which the note was given, even at a sacrifice, (for I am always disposed to buy peace,) I am willing to sustain loss; but if they are wholly worthless, I can see no injustice in my holding Gen'l Porter to his distinct promise, both at and before the maturity of this note, to rescind the contract in the event of the appointment of a commission by Congress. It does seem extraordinary, that the writ should be the first distinct notice I have had of Gen'l Porter's intentions in regard to that understanding between us. There must be some strange misunderstanding on the part of one of us; when I saw Gen'l Porter last, he distinctly admitted his promise, but said he was not sufficiently informed of the appointment (being then just returned from the South,) and as I understood him, took time for that purpose; if I am wrong in this matter, I wish, as in all others, to be corrected, and prefer an arbitration by honorable men to a suit. If an arrangement can be effected, I should, of course, prefer it, before return term, and as I wish to set out for Mississippi in three or four weeks, should be glad to hear from you as early as possible." The above is from a rough draft in your orator's possession, and he believes, substantially correct. Your orator believes that said Frierson received said letter, and that he communicated it, or the substance of it, to said defendant. Your orator, however, received no answer to it, until he saw said Frierson, he thinks, at the return term, when he gave your orator to understand that no reference could be had. Your orator, in making the proposals contained in said letter, was actuated by a sincere desire of avoiding law suits, and certainly not from the expectation of more certain relief from the arbitration than from this honorable court. Your orator further states unto your honor, that on the second visit he made to that part of Mississippi, after his return to Tennessee, subsequent to his first contract, as before stated, with the defendant, he called upon Col. John C. Richardson, of Tehula, (the only person, your orator believes, of that name and title in Tehula,) then a merchant, and whom your orator believes and charges to be the same Col. Richardson, whom the defendant, as before stated, represented to your orator as having offered the defendant $12,000 for the claims, or same interest which he sold to your orator, and enquired of him about that transaction.

Your orator states, that said Richardson informed your orator, that he had not made such an offer; your orator, supposing that it might be of some use to have the statement of said Richardson in writing, afterwards addressed a letter to him on the subject, and received an answer from said Richardson, which your orator will produce, as this honorable court may direct. Your orator had another conversation with said Richardson, in January last, on this subject, in which he appeared to have no recollection of any such offer, and not to believe that he had made it, but

stated to your orator, that said Porter was anxious to sell to him, and had given to him at the time of lottering account of the claims. That defendant had represented to him, that the bill for their adjustment had passed the senate, and would have passed the house of representatives, but for the obstinacy of one member, who objected to dispensing with the rule of the house; that it was first or second on the calender, and would certainly be passed at the next session; that it was all that could be desired, and would make the claims sure; that said defendant gave a flattering account of the value of the lands and spoke of the claims as well located, and stated that if there were but 25 sections of Gwinn & Fisher's purchases saved, he would be entitled to them. Your orator is not fully informed of the nature of those claims, nor of the contract made with the Indians by said Gwinn & Fisher, nor of what has been done by the defendant, or by said Gwinn & Fisher; but your orator, from information, charges, that none of those claims have been secured, nor does he think it probable they will be obtained by the assignees of the Indians. Your orator does not believe, that the defendant has attended to the claims, according to the spirit of the understanding between your orator and said defendant; of all which several subjects, your orator prays said defendant may answer, and make full discovery. The premises considered, your orator requires the defendant, Thomas J. Porter, to discover and set forth specifically the nature of the claims of said Choctaw Indians, of which claims he pretended to be the owner, as aforesaid. What individual Indians sold the claims to Fisher & Gwinn, or either of them, and what are the evidences in existence of the contract or assignment, between each Indian and said Fisher & Gwinn, or either of them, whereby they, or either of them, become entitled to the claims of said Indians. What were the terms of each contract, and the particular nature of each Indian's title, of whom the said Fisher & Gwinn, or either of them, purchased; and what steps had been taken by each of said Indians, of whom they, or either of them, purchased, either by the Indian himself, or by Fisher & Gwinn, in behalf of the Indians respectively, towards the securing and perfecting the said claims according to the treaty. What was the exact state of each and every Indian claim, purchased by the said Fisher & Gwinn, or either of them, from the Indians, when the same were assigned to the defendant, Thomas J. Porter; and also at the date of the contract between the said Thomas J. Porter and your orator. What were the number of sections or claims, so contracted for by said Gwinn & Fisher, or either of them, and when contracted for or purchased, and for what price or consideration. What number and what claims, of those conveyed to him by Fisher & Gwinn, have been sold or disposed of by the defendant, and when and to whom, and for what price or consideration. What number and what claims, of those conveyed to, or contracted for, by the said Fisher & Gwinn, or other members of that company, have been sold, or disposed of by them, and when, to whom, and for what price or consideration, and who are the present owners of the same. What services, specifically, the defendant rendered, and was to render, to the said Gwinn and Fisher, in considera-

tion of the conveyances, by them to him, of said claim, and what services, specifically, he has actually rendered since the said conveyances. What compliance, specifically, he has made with his said contract with Fisher & Gwinn. What action has been had by Congress, or the Government of the United States, upon the subject of said Indian claims, and towards the perfection of them in the Indians, or those claiming under them. Whether a commission has not been instituted by Congress, and when, to take them into consideration, and with what powers the commissioners were vested, and what proceedings have been had by said commissioners, relative to the claims of Fisher & Gwinn & Co., and those assigned by Fisher & Gwinn to the defendant; and whether the defendant has done anything, and what, specifically, towards the establishment of the claims assigned by him to your orator, before said commissioners; and what is the precise condition of each of said claims at present. And what evidence has been produced, before said commissioners, by the defendant, or any other person, going to establish the said claims respectively; and what evidence there is in existence, respecting their validity, and in whose possession such evidence is to be found, and from what sources it is to be obtained. To each and to all of these things, your orator prays that the defendant may full, true, and specific answer make. He also prays, that an injunction may issue, to restrain the defendant, and all others, from further proceedings on said judgment at law, until the final hearing of this cause; and that by a final decree, herein to be made, the said contract with the defendant be rescinded, and said judgment perpetually enjoined; and that such other and further relief in the premises be granted, as your orator may be entitled to, according to equity and good conscience. May it please your honor, also, to grant a subpœna, directed, &c., commanding, &c., and your orator, as in duty bound, will ever pray, &c. This is the first and only application which your orator has ever made for a writ of injunction to stay the proceedings on the said judgment at law.

JOHN MARSHALL, and
THOS. WASHINGTON,
Sols. for Comp't.

This day personally appeared, in open court, Thomas Maney, the above named complainant, and made oath, that the matters and things which are stated in the above bill against Thos. J. Porter, as of his own knowledge, are true; and that those which are therein stated, as of the information of others, he believes to be true.

THO. MANEY.

Sworn to in open court.

BENJ. LITTON, *Clerk.*

Exhibit A.

CHICOPA, MISSISSIPPI, *Dec. 17th*, 1825.

This article of contract and sale, between Thomas J. Porter, of Columbia, Tennessee, of the first part, and Thomas Maney, of Franklin

Tennessee, of the second part, witnesseth: that whereas, by contract, dated 7th February, 1835, Charles Fisher, of North Carolina, has conveyed to the said Thomas J., ten sections of land, and William M. Gwinn, by contract, dated 10th Nov., 1835, has conveyed to the said Porter fifteen sections of land, making twenty-five sections, to come out of a contract, or contracts, [which] said Fisher & Gwinn have made with certain Choctaw Indians, for their claims to lands, under the 14th article of the late Choctaw treaty, a copy of said contract of Fisher & Gwinn to Porter, being furnished to said Maney; and whereas, by a contract this day made between said Porter and Maney, the said Porter has, for a valuable consideration, sold to said Maney an equal and undivided one-half of said contract of twenty-five sections, reserving and not selling, in *this* contract with said Maney, the locations spoken of in said contract of Fisher & Gwinn, as being located in township 24, range 8 west, of 12 sections. Therefore, for the consideration aforesaid, the said Porter has, and by virtue of this instrument does, sell and convey to said Maney, one-half of said twenty-five sections, or an individual interest of one-half, in the whole of said twenty-five sections, by quit-claim; the said Porter not guaranteeing, or to be bound by any manner of recourse in law or equity; but, for the consideration aforesaid, quit-claims to said Maney the interest aforesaid, with all the advantages arising under the same, from the said Fisher & Gwinn.

Witness my hand and seal—

THOMAS J. PORTER. [SEAL.]

Exhibit B.

FRANKLIN, *October 4th*, 1844.

$5,000.

Eight months after date, I promise to pay Thomas J. Porter, or order, at the Union Bank of Tennessee, at Nashville, five thousand dollars, for value rec'd of him.

Witness my hand and seal—

THO. MANEY. [SEAL.]

(Endorsed.) For value received, I assign the within note to Wm. McNeille.

THO. J. PORTER.

June 1st, 1837. WM. MCNEILLE.

Whereupon, process was issued, as prayed for in the bill, and was returned duly executed. And, at April term, 1839, the following order was made, to wit: "On motion, it is ordered, that an injunction issue, according to the prayer of the bill, upon complainant entering into bond and security, according to law." And on the 21st September, 1839, the defendant, Porter, filed his answer, which is as follows, to wit:

The answer of Thomas J. Porter to the bill of complaint, exhibited against him by Thomas Maney, in the chancery court at Franklin:

This defendant, saving and reserving to himself all benefit of excep-

tion to the manifold untruths, errors, and imperfections, in said bill contained, for answer thereto, or to so much thereof, as he is advised is material for him to make answer, answereth and saith: That as to all that part of the bill which speaks of the complainant's having set out to attend the land sales, and the information he received from his friends, as to the difficulties that arose at the sales at Columbus, and the information he received as to where this defendant could be found, and as to his having an interest in the Indian claims, and a knowledge thereof, he knows nothing. He admits, that on his way from Columbus to Chocchuma, in company with Doct. Gwinn, and a few miles from the latter place, the complainant did call on him one morning, and he may have told him, that a considerable portion of land had been reserved from sale, for the satisfaction of the Indian reservation claims at that place; but this defendant has no recollection of having told him he need not attend the sales at Chocchuma, or any thing to that effect. This defendant knows, there were many of the said Indian claims unsatisfied at Columbus, and were intended to be located in the Chocchuma district of country, and supposed that there would be reservations at said sale, as at Columbus. This respondent admits it to be true, that complainant attended the sale of land at Chocchuma, and a large portion of the most valuable lands were not offered for sale, but were reserved for the satisfaction of the Choctaw reservation rights, which were located thereon; but this defendant does not admit or believe the statement to be true, that complainant was one of the very few with whom he was unacquainted, as there were a number of persons with whom, he knows, he was acquainted, and among others, Doct. Gwinn, who was present during the whole time of the sale at Chocchuma, and left there with respondent, and has no doubt but there *was* others, as the place was not far from his farm in Mississippi. Nor is it true, that the defendant was the only one who appeared to be much acquainted with the nature of the said Choctaw claims or reservations. These claims were much talked of among the crowd attending the sales, and their merits publicly and privately canvassed. At Columbus, they had been the subject of public meetings and public addresses, and at Chocchuma, they were the subject of much and anxious conversation and interest. Committees on behalf of the settler, and committees on behalf of the holders of the claims, were appointed on the ground, to settle the disputes between the Indians and white settlers, all of which was publicly transacted, and in which the plaintiff seemed to take a good deal of interest, and have much to say. The location of those claims, and the consequent reservation of a large portion of the valuable lands, thereby placing them beyond the reach of the settlers, land speculators, and others, wishing to make purchases, produced the deepest excitement, such as can hardly be conceived by one who never witnessed such scenes at land sales. This disappointment of those not interested in these claims, brought on the claimants much ill will and abuse from those who had no interest, and who were not able to make purchases; whilst those who were able, were very anxious and pressing to purchase an interest in these claims; among the latter class was the complainant.

This defendant further answering says, that he had purchased, and had a written contract with both Gwinn & Fisher, for a portion of said Indian reservation claims, to wit, ten from Fisher, and fifteen from Gwinn. These contracts of purchase with Gwinn & Fisher, were the first made with them, and respondent agreed with them to attend Congress, at the next session thereof, for the purpose of using his best endeavors to have some law passed to facilitate the satisfaction of those claims.

This defendant says, that it is not true, as stated, that he offered to sell complainant any part of his interest in his contract with Gwinn & Fisher; on the contrary thereof, he had no wish or desire of selling to him. Complainant came to respondent and had frequent conversations upon the subject of these claims, and expressed his entire confidence in them, and did not ask the defendant's opinion in relation to them. It is true, that they had long known each other, and were friendly, and therefore he presumes they had more frequent conversations on these subjects than they would otherwise have had; but these conversations were never sought, or brought on by respondent, who had given the best evidence of his confidence in the claims, by his purchases thereof. In these conversations, this defendant, probably, did speak of these claims, as arising under the 14th section of the treaty of Dancing Rabbitt, but in so speaking of said claims, he did not do it as communicating any information to complainant on the subject, who was well acquainted with their nature, as manifested by his various conversations with respondent while at Chocchuma; respondent may also have represented to complainant, in some of these conversations, his belief in the justice and validity of these claims, or most of them, and, in all probability, that they would be recognized by Congress, and in case of their failure in Congress, he thinks it probable he may have stated, that the claimants could and would file a bill in the federal court to enforce them; but this defendant did not say the claims could be enforced; but if he had have so stated it, it would have only amounted to his opinion on the subject, upon which complainant ought to be, and probably was, better able to form a correct opinion than respondent, he being an attorney of some practice and standing, and the defendant being without that advantage; this defendant believes the complainant did, in some of their conversations, enquire of defendant as to the probability of making an advantageous purchase of some of these claims of Davis, and this defendant informed him, that he had heard that Dr. Gwinn set up a claim to the same reservations, as he alleged, by prior contracts with the Indians, and therefore advised him not to make a purchase of said disputed claims; but this respondent most positively denies ever having represented to him, that Gwinn was under a pledge to sell no more of said claims; respondent gave this advice to complainant as a friend, with the sole view of subserving his interest, and with no views of making any sales to him himself; complainant, after various roundabout conversations, at length enquired of respondent, whether he felt disposed to make sale of some of said claims to him; that he had for some time been operating in Mississippi, but had made nothing by farming, and he must turn to

trading; that he wished to trade with me, and was complimentary enough to say, he wished to get into "my luck;" that he had been examining the treaty with Marsh, an attorney, who headed the opposers of these claims, and was much exasperated against them, and that he was satisfied they were good, and was willing to risk them, if he could get them at a fair price; respondent informed him, he did not wish to sell them to him; that he had already sold an undivided half thereof to one Keyes, at Columbus, and had, by that trade, already made enough to run the risk of the claims himself; that he had confidence in the justice of the claims, but whether they would be allowed or not by Congress, depended much upon the discretion of the Executive, who was much governed by his own will in such matters; that if they failed, he was not well able to bear the loss; complainant frequently renewed his application to purchase, and rather importuned respondent, who repeatedly declined selling to him; respondent represented to him, these claims were rating high, and would command the cash, which he knew made them the more valuable to the respondent at that time; respondent was teased from time to time by complainant on the subject, in so much that he mentioned his importunity to his friends, and among others, Lucius J. Polk, a friend and acquaintance of complainant; after much importunity, respondent, after his return to his farm from the sales, consented, and did sell him his remaining interest in the 25 sections purchased of Gwinn & Fisher, for the sum of eight hundred dollars per section, or for ten thousand dollars, payable as charged in the bill, took his two notes for $5,000 each, and executed to him the assignment of said claims, without recourse, as set out in exhibit A, to complainant's bill; respondent also furnished him copies of the original contracts with Gwinn & Fisher, and exhibited to him the originals, and complainant assisted respondent in comparing the originals with the copies; respondent, further answering, says, he did not state to complainant that if there were but 25 sections he would be entitled to them, but exhibited to him contracts, and left him to judge for himself; this respondent did not represent that he was originally a joint contractor with the Indians, and had agreed to take the 25 sections, as more secure; on the contrary, he informed him he had made no purchases of the Indians, but that his contract was with Fisher & Gwinn, as before stated, and which he showed to him, thereby giving him all the information on the subject in possession of respondent; this respondent says, it is true, as stated in the bill, that respondent did not consent to make sale of his interest in said sections while at Chocchuma, but after the sales were over, he returned to his farm, about 40 miles distant, where he was visited by complainant, in about two weeks, for the purpose, as he learned, to make said purchase, not to pay respondent a friendly visit; upon this last visit, they had much conversation upon the subject of these claims, and his proposed purchase; respondent did state, but not till long after the sale to complainant, that the subject had been before Congress at the last session, and that some action had been had thereon; that a bill to appoint a commission to examine these claims had passed the Senate,

and probably would have passed the House, but for the obstinacy of a member refusing to dispense with the rules of the House; that it would be taken up, as he believed, early the next session, and he had every confidence it would pass into a law; these representations were made in good faith, and the opinion was fully justified by the fact of the passage of said law, and the appointment of commissioners.

This respondent also expressed his satisfaction with the provisions of the bill, but does not recollect to have stated that it was first or early on the callendar, and would be taken up early in the session; but if any such statement was made, it was after the sale to complainant; it is not true that respondent represented these claims as well located and worth ten dollars per acre; many of them, he believes, had been located, and mostly in good locations, but some had been located in indifferent land; respondent admits he informed complainant he had been at Washington city to attend to these claims, among others, and that he should attend the next Congress; but he did not state, or promise, or agree to attend to said claims any further, or at any other session of Congress, although, in point of fact, he went there two or three times on that business, and continued to attend until the bill was reported as it was passed; it is not true, that he represented to complainant he was still interested in same; but he never made any such remarks in reference to the future success of the 25 sections, all of which complainant knew respondent had parted with; nor is the statement true, that respondent stated he did not intend to sell the other half of the 25 sections; on the contrary, he informed complainant he had, before that time, sold them, as above stated, to Keys; it may be true, that respondent stated, complainant would have nothing to pay towards procuring titles to said lands, as there were no fees of office attached to any of the offices, the whole being paid by the United States, but he did not state that he would attend to them throughout; respondent might have stated it as his opinion, tho' he has no recollection thereof, that if Congress made a pecuniary satisfaction, there would be no difficulty in procuring the Indians to make title according to their contracts, as Indians have generally complied with all contracts fairly made with them, but this was only the expression of an opinion; nor did respondent say the Indians could not have asserted their claims without the aid of Gwinn & Fisher, as untruly charged in the bill; as to the charge in the bill, that complainant had been informed, upon his return to Tennessee, by a friend, that Davis had offered to sell his Indian claims at 62½ cents per acre, which he declined, he has no knowledge; but *of the* distinguished men in Congress were in favor of these claims, or that Mr. Clay would support them, or that Mr. Webster's opinion had been taken and was in favor of them, nor did he represent that Judge White was, or would be in their favor, all said charges are utterly without foundation, and must have been suggested by the sanguine hopes of complainant; this defendant says it is not true, as stated in the bill, that respondent ever stated to complainant that Col. Richardson, of Tehula, had offered him $12,000 for said interest sold complainant; no such statement was ever made by him, or that he could

get that sum of said Richardson, though he may have; respondent stated that Richardson, perhaps, might purchase of complainant; he may have stated, either before or after the sale, that he wished complainant to make something by his purchase, and he yet wishes he may do so; but he did not say, if these claims succeeded, he had made enough any how; it would have been idle and nonsensical in him to have made any such statement, for he had parted with his whole interest in said 25 sections, or claims, to Keys and complainant, and had no interest in their success; he may have stated he had already made enough off those claims, and was willing complainant should reap any future profit; as he may have made use of some such expression in relation to his interest in 40 other sections of said Indian reservation, under [?] and the contract in which, he supposes it may be true, as Davis's claims were not considered of much value, and were not in demand, owing to the conflict between him and Gwinn; respondent is willing to admit, that after complainant came to Tennessee, he did see, in the public papers, the reported speeches of Clay and Webster, White, and als., who opposed those claims; and he is informed that the paper published in Franklin, the residence of complainant, had followed suit, and had opposed the claims, heading one of his articles "Another land bubble bursted," as he has heard; respondent further answering, says, that about the middle of March, 1838, on his way to Washington to attend to said Indian claims, among others, he met with complainant at a hotel in Franklin; he approached respondent with the contract in his hand, and looked as if he was under some high state of mental anxiety; he took respondent to the back part of the piazza, said he was happy to meet him, and wanted him to take back those claims; *and* was greatly surprised, for I had just returned from Mississippi, and had not learned what was doing in Congress, and asked him what was the matter; he said he wished to cancel the trade; I told him I would not do it, and asked if any thing had occurred injurious to them; he replied, no, not a word, but he expected Congress would appoint a commission to examine the claims, and he wished to get the office of one of the commissioners; that he thought he could bring an influence to bear on the President that would enable him to get the office, and that he could not sit if he was interested in the claims; respondent remarked, he must have heard something that he had not communicated; that he would be pleased to see complainant get an office, but was not willing to pay so large a sum as $10,000 for it, to make him eligible; he *applied*, in apparent despair, oh, General, you are a single man, have no family; I have a family, and shall be ruined if you do not take them back; respondent answered him, he could not so well see how his getting the office would ruin him, that if he wanted office and would change his politics, he might succeed; respondent then reminded him that he had forced the contract on him when he did not wish to sell; that when advised by respondent to sell, he refused, and now he asked respondent to rescind; for such a reason, he could not and would not think of it; that if the claims were rejected, as he suspected from complainant's conduct, it would be no argument

with respondent for rescinding the contract; at this time respondent had not read the papers, or heard of the proceedings in Congress, and complainant gave him no information on the subject; about this time the stage was ready, and defendant left for Washington city.

At the above interview, complainant did not ask a rescission of the contract upon the ground, or for the reasons set out in the bill—he said nothing of the Davis claim, or of the delay being ruinous; he offered no other reason for wishing to rescind, but the desire to get the office before mentioned. Respondent thinks he did state he had just returned from the south, and knew nothing of what was doing in Congress, but thought complainant was unnecessarily alarmed; that he could not agree to the cancellation of the contract, but did not say he would see about it, and write to complainant—nor did complainant inquire of respondent whether he owned the other half of the 25 sections, nor did respondent make any such reply as stated in the bill, that he did not. Complainant did not then ask your respondent, what he sold the other half for—nor does he recollect that he ever asked that question, or any reply he made, but is certain he never said he had let a relation have them. Complainant did not then say, tho' he may at some other time have said, he was not acquainted with Gwinn & Fisher, but it must have been long before the contract, and respondent may have said they were good or clever men, but he does not recollect any such matters. And complainant never said he felt less secure, on account of respondent's parting with his interest, nor did respondent say he would undertake for them, or cause them to execute any paper that might be necessary for his safety; nor that, if Congress gave money instead of lands, he would see that complainant got it.

Respondent further answering says, that complainant did not suggest the death of defendant, nor did he say, in that event, he would provide for it, or any thing to that purport, or that he should not loose it; nor did he say he would write to complainant. Responded did not state, or agree as stated in the bill, that if a commission should be appointed to sit upon the claims, he would take them back, or any thing to that purport or meaning; the whole charge is a fabrication of complainant, and if true, would represent complainant in a most ridiculous attitude; that if the claims turned out to be good, respondent was to have the benefit; and if they turned out bad, complainant was to bear the loss. Respondent never did state to complainant that he never would put his notes in bank; if he had, he would have complied with his promise.

Respondent further answering says, that as to the locations of the claims, complainant knew as much about the same, before his said purchase, as respondent—the books of the locating agent were then before him, open for inspection, in which every location was registered. The register's books were also then open, and all the claims and reservations entered were registered, shewing distinctly the townships, range, section, and quarter section of each location. All the evidence of the Indians' claims were also in said offices, opened to public inspection, and *were* was no more difficulty in getting every information, than in the entry

taker's and register's offices, under the land laws of Tennessee—all this was well known to complainant, at and before the sales at Chocchuma. With all this information, and means of information, he took the claims of your respondent to them, without recourse, as will fully appear by exhibit A, to complainant's bill. There was no fraud or concealment in the transaction, and complainant knew as much, or probably more, of these locations and claims than respondent. But few of those claims, as he has been informed, had been located before the commencement of the sales at Chocchuma. Most of these entries were made on the ground during the progress of the sales. Whenever a certificate of entry was made by the locating agent, the register entered the same as a reservation on his maps—these entries called much attention, and produced intense excitement among the crowd. Respondent being interested in the one-half of the 25 sections, afterwards sold to complainant, and 40 others, as before stated, during the progress of the locations that were making, took memorandums of the description of the lands entered, and the names of the Indians, which were shewn by defendant to complainant, and of which defendant believes he took copies at the time. The fairness of these claims were, and had been much discussed and canvassed, and the complainant had every information, and means of information, possessed by the respondent. Respondent further answering, says, that upon his return from Congress, after the interview before stated at Robinson's tavern, Congress not yet having passed the law authorising the commission, he again met complainant at Robertson's tavern; he manifested the same distress and anxiety, and again proposed to rescind the contract; but he had now assumed an entirely different ground, or had entirely abandoned the grounds that he wished to get the office of commissioner. He then alleged that the Government would be so tardy in allowing these claims, if allowed at all, that he could not make the lands available to meet the notes for the consideration, and he, in the mean time would be ruined. He stated that he had been in great distress of mind on the subject; said, with tears in his eyes, he had been constantly unhappy, but never hinted, but expressly disavowed any fraud, or improper conduct on the part of respondent. He placed the whole on the ground of the probable delay and consequent loss, by being compelled to raise the money. Complainant thus commenced a course of great civility and kindness towards defendant, and descended to the ordinary acts of flattery and attentions. Respondent had always had kind feelings for complainant, and these feelings were so worked upon by him, that he felt compassion for his distress. He insisted that he was not able to bear the loss. Respondent then replied to him, in one of those most pathetic appeals, Mr. Maney, I will divide the loss with you. You know I did not want to trade with you. I sold it to you on time, when I could have sold it for cash; that you retained it when I advised you to sell it and avoid risk; now, to relieve you from such distress as you seem to have brought on yourself, I will take your note, payable at eight months, in bank, with your word of honor that the money shall be ready, and not let me again hear of the matter; I will give you up your notes

for $10,000. I drew the note for $5,000, he signed it, and tore up the other notes, seized me by the hands, and expressed the deepest gratitude for the favor bestowed. After a short conversation he retired, and respondent left next morning. This transaction took place about the time set forth in the bill. Complainant executed a re-assignment of the one-half of said interest on the back of the assignment made by respondent to him as charged, all of which was done in a chamber of Robinson's hotel, at night, and no other person was present.

The charge in the bill, that, at that time, he asked respondent whether he was willing that the same understanding should continue in regard to defendant's taking back the claims in the event of the appointment of a commission, and that defendant replied that he was, is wholly untrue in every particular; no such thing was ever mentioned or thought of, but the whole is a fabrication and after-thought; no such question was asked, or response given; and respondent is greatly astonished to see such a charge, after the kindness shown complainant in that transaction, and after that final settlement of all difficulty on the subject of these claims. This arrangement was not the result of any previous conversation at Nashville, but solely of the interview at Franklin. Complainant may have requested a longer time for payment for the $5,000 note; but of this he has no recollection. Respondent admits he had repeatedly spoken of the appointment of a commission as probable, and, if made, as highly propitious to the claims; and, in that event, the claims would be valuable, and perhaps worth much more than complainant had given for them; and he has but little doubt but the claims will be valid, and very valuable to complainant as well as respondent. Respondent admits the note fell due as charged, and had the endorsements thereon, as stated in the bill; that suit was instituted thereon in the name of respondent, and judgment obtained in the supreme court, as charged, and execution has issued thereon. Respondent had borrowed of Wm. McNeille twenty-five hundred dollars, and had placed this note in his hands as collateral security, and had not the least idea the note would not be paid at maturity. Respondent admits that Congress did pass a law authorizing a commission, as charged, and that they entered upon the duties of their office, as set forth in the bill; he supposes it may be true that Andrew Hays, an agent to attend to similar claims, expressed to complainant his satisfaction with the laws. As to the charge, that on the 19th April, 1837, complainant addressed a letter to respondent at Columbia, such as charged in the bill, he has no knowledge, information, or belief, other than from the statements in the bill; he received no such letter, and never heard of it before he saw it stated in the bill; at that time deft. was in the State of Mississippi. Respondent supposes it may be true that H. R. W. Hill informed complainant that his note had been offered in bank, as charged, and that he told said Hill that he was not willing to pay the same, and stated his ground, as set out in the bill; and that said Hill made representations thereof to the bank, though, as he is informed, it was at the request of complainant. As to the particular conversations that passed between them, he has no knowledge; but this respondent, not long after,

was informed of said conduct of complainant, and, meeting him in Nashville, he applied to him to know why he made such statements. Complainant at first denied having made them, and referred him to H. R. W. Hill. Respondent became irritated, and used some very harsh expressions, indicative of his indignation at complainant's false representations. It was in this conversation that complainant, for the first time, set up the pretence that respondent had agreed to take said claims back, in case a commission was appointed. Your respondent was much surprised to hear such a statement made, and at once positively, unequivocally denied it. In this conversation—for there was but one, instead of two, as stated in the bill—complainant asked respondent if he had not heard of the appointment of a commission; to which respondent made some laconic reply, expressive of assent, which he does not now recollect; it may have been to the purport set forth in the bill. In this conversation complainant may have asked this defendant if he did not recollect having promised to take the claims back, if a commission was appointed, though he does not recollect his doing so; but respondent did not reply, in substance, as charged, "not if the commission is of no account," or to that purport, but expressly and flatly denies having ever made any such promise, at all times, and upon all occasions, to him or others. Complainant did probably state that Hays was satisfied with the act of Congress; and he may have stated he had written to respondent on the subject, and named two of the commissioners; but of this he has no particular recollection, as he was exasperated, and many words did not pass between them.

Respondent, further answering, says, that it is true that the said Indian reservation claims arose out of the 14th section of the treaty of Dancing Rabbit, and that said section of the treaty was of the purport set out in the bill; this treaty, and particularly the 14th section, was often seen and well understood by complainant before his contract with respondent. It is also true that many Indians did present themselves to the agent, as charged in the bill, who, being drunken and trifling, did neglect or refuse to register the names of said Indians, as he should have done, and reported to Government but a small part of those who had applied and done what was necessary to give them a reservation claim. In consequence of this neglect, the lands of many were sold by the Government, who intended to remain. It is also true, as he is informed and believes, that Gwinn and Fisher had made contracts with many of these Indians, as charged in the bill; by these contracts they agreed to secure to the Indians their reservation rights, in consideration of which the Indians were, in most instances, to give them one-half of the land, and, in some cases, perhaps more; but this defendant never saw any of said contracts, is not familiar with them, and has no other knowledge or information than as above stated, and of which complainant is as fully acquainted as respondent. Respondent made his purchase of Gwinn and Fisher, upon their representations of the general nature of said contracts, which were numerous, as above stated by complainant; he so informed complainant, who relied, as respondent had, upon the representations so made by Gwinn and Fisher, without looking into the particular contracts,

which would have required much time and labor, and would result in nothing beneficial. Respondent is willing to admit that complainant has never realized anything from those claims, in land or money, but he might easily have sold them at a profit, for the demand was very great for them, about the date of his purchase; but he preferred to run the risk of large prospective profits, in preference to a smaller profit, certainly secure, saying he was able to risk something. This complainant was well able to do, though he has since plead his poverty so strongly—for respondent is informed and believes, he is a man of handsome property, and not at all embarrassed—besides his farm in Mississippi, he has much valuable property in Tennessee. Respondent is not informed to what extent Gwinn & Fisher have sold their interest in said claims, but believes they yet have large interests in the same. Respondent admits that he transferred complainant's note to McNeille, after the last conversation aforesaid, as stated in the answer, as a pledge for money borrowed. Respondent admits that complainant wrote the letter to S. D. Frierson, set out in the bill. That it was shown to respondent, who told his attorney he had no doubt but complainant was laying the grounds for a bill of injunction, and to inform him he would consent to no reference; which he believes he did, as charged. As to the charge that complainant called on Col. Richardson, and all that passed between them, he has no information, and requires proof thereof; but if such an interview did take place, he believes it was done with a design of creating a feigned pretence for a future bill; and that said Richardson did not make the statement set out in the bill, in the manner and form therein stated; and if statements were made, they are not true in many particulars, which it is deemed unnecessary to point out, as they are set forth in his declarations alone. Respondent admits it to be true, that none of the Indian reservations have been ripened into patents, though, as he is informed and believes, the commissioners have reported in favor of many; and he believes most of said claims are valid, and will eventually be realized by the claimants, and, among others, by complainant. This respondent states he entered into no contract with complainant to attend to said claims, but has attended to them, as he had agreed with Gwinn & Fisher. As to the individual names of the Indians of whom Gwinn & Fisher made their purchases, he is not able to state them all; but herewith files a list of such, with whose names he is unacquainted, which is all the knowledge or information he has on that subject, which list is marked exhibit I. This very list was shown to complainant at and before his purchase of respondent. Respondent has no information with regard to the particular contract made with the individual Indians. His information on that subject is general, as before stated, which is all the information he has on that subject. The particular nature of each Indian's title is their having made application to the agent for a reservation, within the time prescribed by act of Congress; and the agent's refusing to register their names, (or having destroyed the register,) the steps taken to secure these claims are proofs made of the application to the agent by Indians, ac-

cording to law, and this proof laid before the locating agent, in the first place, and then before the Indian committee, and then before the commissioners, as he is informed and believes. Also, entries of said claims on the vacant land, and causing them to be spread upon the maps of the register, and having them reserved from sale or entry by others. Defendant is not informed of the exact situation of the Indian claims, when the assignment was made to him by Gwinn & Fisher, nor at the time the assignment made by respondent to complainant, other than as before set forth in this answer. Neither does he know, nor has he been informed, as to the number of sections contracted for by Fisher & Gwinn, or either of them; but has been informed and believes they are some hundreds. Nor does he know, nor has he been informed, of the prices agreed to be given, other than the security of the claims; and in some instances, where the whole section was purchased, some pecuniary consideration for the remaining half section, but as to how much he is uninformed. This defendant, as before stated, sold all the remaining interest under his contract to Hays, who paid him therefor in cash eight thousand dollars. This respondent is not informed what number or what claims contracted for by Fisher & Gwinn have by them been sold to others, what for, or to whom, or who are the present owners thereof. This defendant, by contract with Gwinn & Fisher, agreed to attend Congress, at the next session thereof, for the purpose of attending to said claims. As the object was not affected that session, he attended the next, and remained there about four months, with the exception of a few days, and until the Indian committee had reported in favor of the claims. This was more than he was bound to do by the contract. The only action had in Congress towards the allowance or rejection of said claims is the act set out in the bill, and the appointment of a commission, who have been examining said claims, and reporting upon them to the President or to Congress, as he has been informed. He is informed that, so far as the commissioners have examined the claims, they have reported in their favor. The number of claims reported on are about 180; that the commission expired before they had time to examine and report upon the balance; that the President had recommended to Congress to renew the commission; but no action has as yet been had on that subject in Congress; no further action has been had by the Government, so far as he has been informed. Respondent is not informed when said commissioners were appointed; and he is informed they were empowered to hear proof, examine said claims, and to report thereon to the President or to Congress. This defendant's information, as to what proceedings have been had by said commissioners relative to the claims of Fisher, Gwinn, & Co., or those assigned by them to respondent, that they have been reported on favorably, so far as the commissioners have progressed. This defendant has done nothing before the commissioners towards the establishment of the claims assigned to complainant, and never agreed to do anything; and he is not informed what is the precise condition of said claims at this time, he having given no further attention to them, after having parted with his interest in them, other than his attentions at Con-

gress, as before stated. This respondent has been informed and believes, that Gwinn & Fisher have furnished proof before the commissioners of the Indians' applications for reservations, as the law directed; said evidence was filed with the commissioners, who filed it with their report to the President, as he is informed and believes. Whether it is now open to inspection or not he does not know, nor has he been informed on that subject. This respondent herewith files copies of his contract with Fisher & Gwinn, marked K and L, which are prayed to be taken as a part of his answer. Copies of these contracts were furnished to complainant at the time the contract was made, and complainant and respondent compared the originals with the copies, and found them correct. This defendant also herewith files a copy of the letter of instruction, or order, of the President, dated October 13th, 1834, as the grounds or the order of proceeding before the locating agent, agreeable to which the claimants proceeded and acted, which is marked M. All these papers, and all others at the office, were seen, and well understood by complainant, before his contract with respondent. As to all other matters not herein answered, denied, or traversed, he has no knowledge, information, or belief, and prays hence to be dismissed, with his costs.

State of Tennessee, Davidson county:

This day appeared before me Benjamin Litton, clerk and master, Thomas J. Porter, and made oath that the matters and things stated in the foregoing answer, including the whole of page 8, disregarding the marks of the pen on the face thereof, which are to be considered as cancelled, are true and those stated as from the information of others, he believes to be true.

THO. J. PORTER.

Sworn to, and subscribed before me, this 20th September, 1839.

BENJ. LITTON, *Clerk.*

By J. M. GLENN.

Exhibit I, to defendant's answer.

Indians' names.	No. sec.	Description.	T.	R.
Tu-wak-ke	1	15	9	14 E.
Ah-le-ha-mintuble	1	25	9	13 E.
Me-ish-ah-tah, 2 children over and 2 under 10 years	2½	35, 36, S. E. ¼ of 29, S. W. ¼ of 30	9	13 E.
Es-gad-unnah	1	2	8	13 E.
Tho-my	1	22	9	13 E.
Jarn-up-a-gu	1	33	10	14 E.
Ish-im-ma-ho-go	1	32	10	14 E.
A-ah-bu	1	19	9	13 E.
Yon-at-a-ga	1	18	9	13 E.
Ji-me-pah	1	20	9	13 E.
Bell-be	1	30	9	13 E.
Im-ma	1	29	9	13 E.
Kal-ah-it-im-ma	1	32	9	13 E.
Jus-a-ca	1	6	8	13 E.
Nahe-stash-ah, 1 over and 2 under 10 years	2	35 frac'l 36, 8½ 26	9	12 E.
Im-ish-tima	1	31	9	13 E.
Peas-ach-im-ma	1	5	8	13 E.
Ela-it-una, 1 over and 3 under 10 years	2¼	8 W. ½ of 4 and 9, N. E. ¼ of 9	8	13 E.
Me-hah	1	19	8	13 E.
Me-che	1	16	8	13 E.
A-yo-oh-ho-mah	1	21	8	13 E.
Jefferson	1	20	8	13 E.
Eli-mib-abba, 3 over and 3 under 10 years	3½	17, 20, S ½ of 8, E ½ and S. W. ¼ of 19	9	14 E.
A-boc-mint-abba, 2 over and 2 under 10	2½	3 W. ½ 2, N. ½ 11, E. ½ 4	9	14 E.
A-took-lan-tubba	1	10	9	14 E.
Uba- Welah, 2 over 10 years	2	15 and 14	16	6 E.
Jan-ap-ha-gubba, 3 over and 3 under 10	3½	5 and 6, N. ½ S. 4, N. W. ¼ of 8	12	16 E.
A-chdf-fa, 2 under 10	1½	W. ½ 29, E. ½ 31, E. ½ of 30	10	16 E.
Ho-gay	1	20	16	6 E.
A-too-hah	1	35	10	13 E.
Tish-o-a-tubbee, 3d,	1¾	29, W. ½ 21, N. W. ¼ 28	16	6 E.

Esgad-ablu, 2 over and 2 under	2½	20, 29, E. ½ 19	9	15 "
Ia-wa-mu-ha, 2 over and 2 under	2½	18, 19, W. ½ 30	16	6 "
Ish-ta-eg-weak, 3 over and 3 under	3¼	7, 8, 9, N. E. ¼ of 17	13	16 "
Cine-at-im-mah	1	S. ½ of 6 W., E. ¼ and E. ½ of N. W. ¼ 6, and ½ of W. ¼ 8	16	6 "
Math-la-cubbee, 1 over	1½	2, E. ½ of 3	14	5 "
Ye-hlue-a-lit-ubla, 1 under	1¼	W. ½ 33, W. ½ 28, S. W. ¼ of 21	12	16 "
Cor-the-tiah	1	4	9	15 "
E-ha-by	1	W. ½ of 7, T. 16, R. 6 E., and N. ½ of 12	16	5 "
Noc-e-mem-bu, 2 over and 2 under	2½	E. ½ of 12	10	15 "
		And 6 and 7	10	16 "
Tiah	1	S. ½ of 5, S. ½ of 6	13	16 "
Tona-ablu	1	N. ½ 34, N. ½ 35	15	5 "
To-mah-kee	1	36	15	5 "
Ha-tah-la-ma	1	E. ½ 5, E. ½ 8	15	5 "
Kas-e-hah-tah, 2 over and 2 under	2¼	12, 13, S. E. ¼ of 14	13	15 "
Fane-ablu	1	36	9	14 "
Ito-pi-tah	1	N. ½ 3, E. ½ of 4	13	15 "
Hok-lish-teach	1	11	15	5 "
Che-zar, 2 under 10	1½	E. ½ 33, S. E. ¼ 28, N. ½ of 34, E. ½ of S. W. ¼, W. ½ of S. E. ¼ 34	16	5 "
Muck-fai-la, 2 under 10	1½	N. W. ¼ and S. E. ½ 19, N. E. ¼ E. ½ of N. W. ¼, E. ½ S. E. ¼, W. ½ S. W. ¼ of 30	15	5 "
Le-mih-a-gee, 2 under 10	1½	17, E. ½ 8	9	15 "
Lies-una, 1 under 10	1¼	N. ½ 34, N. ½ 33, S. W. ¼ 33	13	16 "
Ike-be-tulla, 1 over and 2 under 10	2	2 and 22	9	14 "
Eo-ho-tubba, 1 over and 1 under	1¾	10, E. ½ and S. W. ¼ of 9	14	16 "
Ab-me-ho-yo	1	5	9	15 "
Me-chubba, 2 over 10 years	2	S. ½ and N. W. ¼ of 4, N. W. ¼ of 9, S. ½ 5, N. ½ 8	14	16 "
Woh-ne-tiah	1	15	10	15 "
Bob-hana, 2 under 10	1½	29, S. E. ¼ 30, N. ¼ 32	10	15 "
Ish-to-ho-yo	1	20	10	15 "
Nok-ne-tubbu, 2 over and 2 under	2¼	19, S. E. ¼ 18, E. ½ and N. W. ¼ of 17, W. ½ of 8	10	16 "
Po-lah, 2 under 10	1½	W. ½ 15, W. ½ 22, S. ½ 21	19	1 "
Un-che-le	1	W. ½ 31, W. ½ 30	10	16 "
O-na-ak-ta, 2 over 10	10	28, 22	12	15 "
El-til-a-wah	1	20	12	15 "
Tal-a-push	1	E. ½ 8, E. ½ of S. W. ¼, and E. ½ N. W. ¼ 8, S. E. ¼ 5	12	15 "
Be-o-tubba, 1 under 10	1½	S. ½ N. E. ¼ 21, N. ½ 1	12	15 "
Milla-tubba	1	N. ½ and S. E. ¼ 22, S. E. ¼ 15	13	16 "
Tusca-ho-ka, 1 under 10	1¼	N. ½ S. E. ¼ W. ½, S. W. ¼ 12	12	15 "

Exhibit—Continued.

Indians' names.	No. sec.	Description.	T.	R.
The-me-ah, 2 over 10	2	3, W. ½ 2, E. ½ 4	13	16 E.
H-to-kah	1	N. ½ S. W. ¼, W. ½ of S. E. ¼ 9, W. ½ N. W. ¼ 10	12	15 "
The-na-ho-tubba	1	28	12	15 "
She-co-pam-bee	1	26	12	16 "
In-can-e-yah	1	1	14	15 "
A-fob-le-chubbu	1	12	15	6 "
Ho-poth-la	1	19	15	6 "
Tu-ches-hoo-mah	1	26	15	6 "
Phil-e-ma-tubba, 2 over and 1	2¼	28, 27, S. W. ¼ of 22	13	16 "
A-ke-ne-aha	1	17	16	6 "
James Toby, 1 over and 1 under	1¾	4, S. ½ and N. E. ¼ of 3	12	15 "
Minta-hubba, 2 over and 3 under	2¾	3, 4, E. ½ and N. W. ¼ of 5	14	6 "
Ho-yon-hun-na, 1 under	1¼	N. ½ 18, N. ½ and S. E. ¼ 17	12	15 "
Tus-a-hah, 1 under	1¼	36, S. E. ¼ 25	12	14 E.
Ah-li-ho-ca, 2 over and 1 under	2¼	26, 35, S. W. ¼ 25	12	14 E.
Ho-te-cubba	1	W. ½ 14, E. ½ 15	12	14 "
Shom-ka-ho-yon, 1 over	1½	22, E. ½ 21	12	14 "
Ela-ba-cubba, 1 over	1½	33, W. ½ 34	12	14 "
A-ma-tuna, 3 over	2⅓	19, 30, W. ½ 31	12	15 "
No-ah-ho-yo, 1 over and 3 under	2¼	6, 7, S. W. ¼ 5	12	14 "
Tus-te-ho-ma, 1 over	1½	5, N. ½ 4	14	15 "
Lon-win-cha	1	35	19	1 "
Tus-ca-ho-no-ha-jo	1	12	19	1 "
A-ho-ba-tubba, 1 over and 1	1¾	11, S. ½ 12, S. E. ¼ 10	12	14 "
Noc-ko-wah, 5 over 10	3½	13, 23, 24, N. ½ 25	12	14 "
Ish-ter-ock-fa-laha	1	22	13	15 "
Han-non-ho-mo, 2 over 10	2	35 and 36	12	14 "
Phil-a-taha, 4 over and 1 under	3¼	11, 13, S. ½ 2, N. ½ 14, S. W. ¼ 12	13	15 "
Bak-a-tubba, 3 over 10	2½	26, 27, S. ½ 23	13	14 "
Stil-a-tubba	1	S. ½ and N. E. ¼ 20, S. W. ¼ 21	12	15 "
Eah-tu-chubba	1	11	9	13 E.
No-wa-takon, 1 under 10	1¼	S. ½ 27, N. ½ and S. W. ¼ 34	14	15 "

Nan-tho, 1 under and 1 over 10	$1\frac{3}{4}$	22, S. $\frac{1}{2}$ and N. E $\frac{1}{4}$ of 15	13	14	"
Io-la-ho-lo-a	1	27	12	15	"
Tuck-ho-la-tubba	1	14	10	15	"
Ish-tan-too-pahl	$1\frac{1}{4}$	8, N. W. $\frac{1}{4}$ 9	12	14	"
Ishe-te-man-to, 1 over	$1\frac{1}{2}$	1, N. $\frac{1}{2}$ 12	14	15	"
Ish-po-la, 2 under 10	$1\frac{1}{2}$	17, E. $\frac{1}{2}$ 18	10	15	"
Hol-a-to-pah, 2 over and 1 under	$2\frac{1}{4}$	17, 18, N. W. $\frac{1}{4}$ 21	9	18	"
No-ho-tubba, 2 over and 1 under	$2\frac{1}{4}$	25, 36, N. E. $\frac{1}{4}$ 35	9	18	"
Tan-pa-no-ish-ta-no-ham	$2\frac{1}{4}$	23, 26, W. $\frac{1}{2}$ 35, S. E. $\frac{1}{4}$ 35	9	18	"
Shap-pan-ho-mah	1	1	10	14	"
Po-sha-at-tah	1	2	10	18	"
A-took-a-la-tubla	1	12	10	18	"
Is-to-ma-ho-ya	1	14	10	18	"
Ale-a-sham-bua	1	13	10	18	"
Paka-ma-ha	1	12	10	14	"
I-yd-ma-ho-kah	1	18	10	19	"
Jim-mah	1	10	10	18	"
Em-pish	1	15	10	18	"
Our-le-ah-tubba	1	21	10	18	E.
Ea-ka-tubba, 2 over 10	2	14 and 15	9	18	"
Ah-pah-hah, 2 over 10	2	12	9	18	"
Hicka-tucha, 3 over and 1 under	$2\frac{3}{4}$	6, 7, N. $\frac{1}{2}$ and S. W. $\frac{1}{4}$ of 18	9	18	"
Noc-a-tubba	1	25	12	16	"
Tish-o-hom-bee	1	3	10	18	"
The-a-bid-cha, 2 over 10	2	30 and 31	10	19	"
Yo-me-tambu, 1 over and 1 under	$1\frac{3}{4}$	1	10	18	"
Pon-chis-tubbee, 4 over and 2	$3\frac{1}{2}$	3, 10, N. W. $\frac{1}{4}$ 11, W. $\frac{1}{2}$ 2, S. $\frac{1}{2}$ and N. E. $\frac{1}{4}$ 34	2	9	E.
Ish-ta-tubbee	1	35	3	8	E.
Wat-tubbee, 6 over 10	4	5, 8, 18, W. $\frac{1}{2}$ 19, S. E. $\frac{1}{4}$ 7, N. W. $\frac{1}{4}$ 17	2	9	E.
Mo-me-tan-bu	$1\frac{3}{4}$	23, N. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ 26	3	8	"
Pas-sha-home, 3 over 1 under	$2\frac{1}{2}$	21, 22, N. $\frac{1}{2}$ 27, N. E. $\frac{1}{4}$ 28	3	8	"
Ela-ta-kec, 3 under 10	$1\frac{3}{4}$	30, N. $\frac{1}{2}$ 29, S. W. $\frac{1}{4}$ 19	3	8	"
E-la-shubbee, 1 over and 3 under	$2\frac{1}{4}$	13, 14, S. E. $\frac{1}{4}$ 15	2	8	"
Homah	1	9	10	13	E.
Knock-a-mah-shubla	1	19	10	13	"
Po-to-tubbee	1	28	10	13	E.
To-ble-cha, 2 over and 2 under	$2\frac{1}{2}$	20, 17, E. $\frac{1}{2}$ 18	10	13	E.
Juf-a-nah	1	21	10	13	"
Mas-a-ba-homah, 1 and 2	2	4 and 3	10	13	"

Exhibit—Continued.

Indians' names.	No. sec.	Description.	T.	R.
Me-a-too-chubba	1	21	11	13 E.
Ton-la-hu-nah, 2	2	8	14	16 "
Ugly-ubba, 2 under 10	1½	7, W. ½ 8	11	14 "
Ho-un-tublu, 1 under 10	1¼	32, S. W. ¼ 28	12	14 "
E-mul-a-tubba, 1 under	1¼	6, S. W. ¼ 5	11	14 "
Ba-nam-tubba	1	N. ½ 36, S. ½ 25	12	13 "
Phil-ubba	1	23	12	13 "
A-che-bah	1	24	12	13 "
O-wan-tubba, 1 and 2	2	4 and 5	12	13 "
Yoc-a-ma-tublu, 1 under	1¼	17, S. E. ¼ 18	12	13 "
Co-wen-my	1	2	11	11 "
Yoc-ke-af, 1 under 10	1¼	6, S. W. ¼ 5	11	12 "
Oh-to-qu-t, 1 do.	1	8	11	12 "
No-go-an-tubba, and 3	2¼	29, N. W. ¼ E. ½ of 28, W. ½ 21	12	14 E.
Philla-moon-tubba, 3 over and 2 under 10	3	13, 14, W. ½ of N. W. ¼, E. ½ of N. E. ¼ 23, S. ½ 23, N. W. ¼ 24	10	12 "
Muk-we-tah, 2 over and 2	2½	22, 15, E. ½ 21	10	12 "
Nish-e-amo, and 1 under 10	1¼	23, S. W. ¼ 14	12	11 "
Ah-to-ho-no-go, 3 over	2½	25, S. ½ 26, N. ½ 35, W. ½ 36	12	11 "
Tun-a-pish-ubba, 2 and 2	2½	14, 13, S. E. ¼ 11, N. E. ¼ 24	9	15 "
Unaboc, 1 over and 2 under	2	S. E. ¼ 24	9	16 "
Tish-ho-ha-cubba, 1 and 1	1½	34, W. ½ 35, N. E. ¼ 35	9	15 "
Ho-an-tubba, 3 under 10	1¾	21, E. ½ 28, S. W. ¼ 22	9	15 "
Ho-ba-tom-ba	1¼	31, S. W. ¼ 30	9	15 "

Exhibit K.

Washington city, February 7th, 1835.

Memorandum of an agreement made and entered into this day, between Charles Fisher, of Rowan county, North Carolina, of the first part, and Thomas J. Porter, of Columbia, Tennessee, of the second part, witnesseth:

That whereas the said Fisher and Alexander F. Young, Daniel W. Wright, Grant Lincicum, and Wm. M. Gwinn, of Mississippi, have heretofore, on certain conditions, purchased and contracted with Indians of the Choctaw Nation in Alabama and Mississippi, for certain land they are entitled to under the provisions of the 14th article of Dancing Rabbit creek, concluded between the Nation and the United States commissioners, on 28th September, 1830, which said lands, or the interest they are entitled to out of the same, are divided between the said Fisher, Gwinn, Wright, Young, and Lincicum, according to certain terms or ratios; and whereas the said Thomas J. Porter, in consideration of his services already rendered, and to be rendered in aiding and assisting the parties aforesaid, in having said claims recognised by law, and perfected to title, &c., is entitled to interest therein; therefore, in consideration of the premises, and previous promises of some of the parties, the said Fisher has, and by virtue of this agreement does, agree to convey and confirm to said Thomas J. Porter, ten sections of land, of average quality out of said claims, from and out of his the said Fisher's own individual interest therein, which is not, though considered as, a discharge or satisfaction of his like claim, on each of the parties aforesaid; and the said Thomas J. [Porter] on his part, undertakes to contribute in proportion to his interest, thus conveyed by said Fisher, and to be conveyed by the other parties or persons aforesaid, toward the satisfaction of any contributions in land or money, which the parties may think necessary to undertake or provide, in order to secure the final accomplishment of the business and consummation of said claims to title, which said interest now conveyed is exclusive of an interest already contracted to said Porter of 12 sections at present located in township 24, range 8 west, in the Chocchuma land district of Mississippi, 7th February, 1835. Witness my hand and seal.

CHARLES FISHER. [SEAL.]

Exhibit L.

State of Mississippi, Nov. 10th, 1835.

This article of contract between Wm. M. Gwinn, of said State, and Thomas J. Porter of Tennessee, witnesseth:

That whereas, heretofore, the said Wm. M. Gwinn, Charles Fisher, Daniel W. Wright, Alexander F. Young, and Grant Lincicum, contracted with certain Choctaw Indians for claims of theirs to land in the late Choctaw country, arising under the 14th article of the late Choctaw treaty, and instructions from the department, which in part have

been located, or reserved; and which said contract or the interest of the parties therein, have been divided between them, according to certain ratios, by contract between themselves; and whereas, the said Thomas J. Porter for services rendered, and to be rendered, in assisting the claimants before the Government, to have their claims recognised and perfected to title, &c., was entitled to an interest therein; and whereas by agreement, the interest of the said Thomas J. Porter, was to be made up to him by each of the parties conveying to him a certain number of sections; therefore, in consideration of the premises, and towards the satisfaction of said Porter's claim on the said Wm. M. Gwinn, the said Wm. M. Gwinn has, and by virtue of this instrument does convey to the said Thomas J. Porter, fifteen sections of land of said contract, to be of average value, and to be taken from the undivided interest of the said Gwinn, but not toward the satisfaction of any like claim said Porter may have on any of the other parties aforesaid, and is exclusive of an interest which said Porter already has, by another contract, to certain lands located in T. 24, R. 8 W. In testimony, &c., I have set my hand and seal.

WM. M. GWINN. [SEAL.]

Exhibit M.—(Copy.)

The requisite instructions will be given by the proper departments for the location and suspension from sale of reservations of land in the Choctaw country, wherever persons claiming reservations under the 14th article of the treaty with the Choctaws, of 27th September, 1830, shall exhibit to Col. George W. Martin, the locating agent, probable evidence of credible witnesses of their right, under the provision of said article, and that their failure to obtain such reservations, has been caused by the mistakes or neglect of the agent, appointed to make a list of reserves. These locations will be contingent, and will be complete only in the event of their being sanctioned by Congress. Until that decision is obtained, the tracts located under this order will be reserved from sale. If the tracts to which any claimants were entitled have been sold in whole or in part, the locating agent will designate upon the plats [tracts] of equal dimensions, and of as nearly equal value, as practicable, and these also will be reserved for sale. In all cases, the locating agent will make special reports of the names of the witnesses, and of the facts and circumstances submitted to him, and these reports will be transmitted in season for the action of Congress at its next session.

(Signed) ANDREW JACKSON.

Washington, Oct. 13th, 1834.

And at October term, 1839, the following order was made, to wit:

The defendant moved the court to dissolve the injunction heretofore granted in this case, and upon hearing the bill and answer read, it is ordered by the court, that said motion be overruled.

And on the 20th of December, 1839, the following replication was filed, to wit:

The replication of Thomas Maney complainant, to the answer of Thomas J. Porter, defendant.

This replicant, saving and reserving to himself all manner of advantage of exception which may be had and taken to the manifold errors, inaccuracies, and insufficiences of the answer of said defendant, for replication thereto says, that he does and will aver, maintain, and prove his said bill to be true, certain, and sufficient in law to be answered unto by the said defendant; and that the answer is very uncertain, evasive, and insufficient in law to be replied to; he, this repliant, without that, that any other matter or thing in said answer contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied; to all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays, as in and by his said bill he has already prayed.

THOMAS WASHINGTON, *Solicitor.*

And at October rules, 1840, the cause was set for hearing by defendant's solicitor; and at October term, 1840, the following order was entered:

On this day came the defendant, by his attorney, and filed the affidavit of Wm. A. Cook, marked H, after the cause had been taken up, and in part argued by the plaintiff's counsel; and after the court, from indisposition, had continued the cause to the next term of the court, and the defendant prayed leave to take the deposition of Wm. M. Gwinn upon said affidavit; but the court decided that if complainant's counsel would agree, that the letter of Gwinn to Porter filed, marked B, which had been offered on the hearing and rejected, should be read as the deposition of Gwinn, the defendant should not have to take the testimony of Gwinn as to other matters in said affidavit, and the complainant's counsel having consented as to the reading of said letter as the deposition of Gwinn, the defendant's motion was overruled. And now, to wit, on the 28th day of April, 1841, being the day and year first above written, the following decree was entered.

Be it remembered that, upon the 28th April, 1841, this cause came on for hearing before the honorable L. M. Bramlitt, chancellor, &c., upon bill, answer, replication and proofs, and exhibits, in presence of counsel of both parties, and was heard; and it appearing to the satisfaction of the court that the facts, allegations, and charges in the complainant's bill contained, constituting the ground for relief in this court, were such, and denied in the answer of the defendant; and the same not being sustained by the proof in this cause, the court is of the opinion, and doth so order, adjudge, and decree, that the bill of complaint be dismissed; and the court doth further order, adjudge, and decree, that the defendant recover of the said complainant Thomas Maney, and Robert P. Curran and William Maney his security, in the bond for the writ of injunction in this cause, the sum of six thousand five hundred and fifteen dollars and fifty cents, being the amount of the judgement at law, with

interest up to this day, and that execution issue, as at common law, to collect the same; and the court doth further order, adjudge, and decree, that the complainant pay the costs of this suit for which execution shall issue.

The complainant in this cause prays an appeal from the decree rendered therein at the present term, which is granted upon his giving bond and security according to law within one month from this time.

Complainant's testimony.

The deposition of R. C. R. Martin, taken before the clerk at the office of Thomas Washington, esq., on the 17th October, 1840, and to be read on the hearing of the cause in the chancery court at Franklin, between Thos. Maney, comp't, and Thos. J. Porter, def't.

Qustion by compl't.—Please state whether or not you are acquainted with the def't, Thos. J. Porter? If so, have you ever seen him write, and are you acquainted with his handwriting? Please look at the papers here filed, marked 1, 2, and 3, and state in whose handwriting the papers are?

Answer.—I am acquainted with the defendant, Thomas J. Porter, have seen him write, and have been acquainted with the handwriting of said Porter all my life. The paper, No. 1, is the proper handwriting of said Porter. The notes, marked 2 and 3, are all in the handwriting of said Porter, except the signatures thereto; the memorandum on the back of said notes are not in Porter's handwriting.

R. C. K. MARTIN.

Sworn to and subscribed before me,

BENJ. LITTON, *Clk.*

17th Oct., 1840.

No. I.

WASHINGTON CITY, *Feb'y 7th*, 1835.

Memorandum of an agreement made and entered into this day between Charles Fisher, of Rowen county, North Carolina, of the first part, and Thos. J. Porter, of Columbia, Tennessee, of the second part, witnesseth: that whereas the said Fisher and Alexander F. Young, Daniel W. Wright, Grant Lincicum, and Wm. M. Gwinn, of Mississippi, have heretofore, on certain conditions, purchased and contracted with Indians, of the Choctaw nation, in Alabama and Mississippi, for certain lands they were entitled to under the provisions of the 14th article of the treaty of Dancing Rabbit creek, concluded between the nation and the U. S. commissioners on the 28th September, 1830; which said lands, or the interest they are entitled to out of the same, are divided between the said Fisher, Gwinn, Wright, Young and Lincicum, according to certain terms or ratios; and whereas the said Thomas J. Porter, in consideration of his services already rendered, and to be rendered, in aiding and assisting the parties aforesaid, in having said claims recognised by law, and perfected to titles, &c., is entitled to an interest therein. Therefore, in consideration of the premises and promises of some of the parties, the said Fisher has, and by virtue of this instrument does, agree to convey and confirm to the said Thos. J. Porter ten sections of land of

average quality out of said claims, from and out of his, the said Fisher's, undivided interest therein, which is not, though considered, as a discharge or satisfaction of his like claim on each of the parties aforesaid. And the said Thos. J., on his part, undertakes to contribute, in proportion to his interest thus conveyed by said Fisher, and to be conveyed by other of the parties or persons aforesaid, toward the satisfaction of any contributions in land or money which the parties may think necessary to undertake or promise, in order to secure the final accomplishment of the business, and consummation of said claims to title which said interest now conveyed is exclusive of an interest, already contracted to said Porter, of 12 sections, at present located in township 24, range 8 west, in the Choctaw land district of Mississippi.

Witness my hand and seal, this 7th day of February, 1835.

(Copy.) CHAS. FISHER. [SEAL.]

STATE OF MISSISSIPPI, *November* 10, 1835.

This article of contract between William M. Gwinn and Thomas J. Porter, of Tennessee, witnesseth: That whereas, heretofore, the said William M. Gwinn, Charles Fisher, Daniel W. Wright, Alexander F. Young, and Grant Lincicum, contracted with certain Choctaw Indians for claims of theirs to land in the late Choctaw country, arising under the 14th article of the late Choctaw treaty, and instructions from the department, which, in part, have been located or reserved, and which said contract, or the interest of the parties therein, have been divided between them, according to certain ratios by contract between themselves; and whereas the said Thomas J. Porter for services rendered, and to be rendered, in assisting the claimants before the Government to have their claims recognized and perfected to title, &c., was entitled to an interest therein; and whereas by agreement, the interest of the said Thomas J. Porter was to be made up by each of the parties conveying to him a certain number of sections. Therefore, in consideration of the premises, and towards the satisfaction of Porter's claim, the said William M. Gwinn has, and by virtue of this instrument does convey to the said Thomas J. Porter fifteen sections of land of said contract, to be of average value, and taken from the undivided interest of said Gwinn, but not towards the satisfaction of the like claim the said Porter may have on any of the parties aforesaid, and is exclusive of an interest which said Porter already has by another contract to contain claims, located in township 24, range 8 west.

In testimony whereof, &c., I have hereunto set my hand and seal.

WM. M. GWINN. [SEAL.]

No. 2.

December 17*th*, 1835.

Twelve months after date, I promise to pay Thomas J. Porter, or order, at the Union Bank of Tennessee, at Nashville, five thousand dollars, for value received.

Witness my hand and seal.

THO. MANEY. [SEAL.]

(Endorsed.)—Settled by reconveying to Porter one-half of my interest in the purchase from him, and giving my note, $5,000, at 8 months, from 4th October, 1836, *note given 5th, but dated the 4th October.*

J. M.

No. 3.

December 17th, 1835.

Two years after date, I promise to pay Thomas J. Porter, or order, in the Union Bank of Tennessee, at Nashville, five thousand dollars, for value received.

Witness my hand and seal.

THO. MANEY. [SEAL.]

(Endorsed.)—Settled, by re-conveying to Porter one-half my interest in the purchase from him, and giving new note, $5,000, at 8 months from 4th October, 1836, *note given 5th, but dated 4th October.*

J. M.

The deposition of John C. Richardson, taken before Michael J. Yonce, a justice of the peace for the county of Mercer, in the State of Kentucky, on 7th day of September, 1840, who, being duly sworn, deposeth as follows, to wit:

The deponent states, that in the latter part of the year 1835, he was in the State of Mississippi, speculating in lands, and felt inclined to speculate in Choctaw floats; and that about the same time there were frequent conversations between him and Thomas J. Porter, the defendant, on the subject of twenty-five sections of Choctaw floats, ten of them claimed by Porter from Fisher, and fifteen from Gwinn, and that he, Porter, appeared anxious to sell all or a part of them, as opportunity might offer. The deponent has no recollection of making him any specific offer; that deponent did not offer him twelve thousand dollars for half of the 25 sections, and that he could not have been induced to purchase at any price, without the guarantee of their title. Deponent recollects that Porter in those conversations stated to him, that he, Porter, had been offered $12,000, or more, for half of said 25 sections, but that he preferred that the deponent should purchase it, hoping thereby, as he declared, more fully to secure the interest of the deponent for the passage of the bill in Congress for the adjustment of the Choctaw claims; and further stated, that the bill had passed one branch of Congress, and would have passed the other, but for the obstinacy of one member, who objected to dispensing with the rules of the House, which motion was necessary to carry the bill through, as Congress was about to close its labors; said Porter gave the most flattering accounts of these lands, as to their value, and stated, that he had been employed to advocate the passage of the bill in Congress, for the adjustment of the Choctaw claims, and that, if but 25 sections were saved, he would be entitled to them by virtue of his contract with Gwinn & Fisher; and further this deponent saith not.

J. C. RICHARDSON.

Justice fee, $1 00, paid by J. F. Bell, esq., agent for complainant.

MERCER COUNTY, *sct:*

The foregoing deposition of John C. Richardson was taken before me, Michael G. Yonce, an acting justice of the peace, in and for the county of Mercer, in the State of Kentucky, at the place, and on the day in the caption mentioned, and was reduced to writing by me, in the presence of the deponent, and in the absence of the parties. And I do certify, that I am not agent, attorney, or solicitor for either party, and that I am in no way concerned or interested in the event of said suit of Thomas Maney, complainant, against Thomas J. Porter, defendant.

Given under my hand and seal, in Danville, Kentucky, this 7th day of September, 1840.

M. G. YONCE, *J. P., Mercer county,* [SEAL.]

Defendant's testimony.

VICKSBURGH, *October 5th,* 1840.

To General T. J. PORTER.

DEAR SIR: In answer to your enquiry, I have to state, that you fully performed the service, for which I agreed to give you an interest in the Choctaw claims, under the 14th article of the treaty of Dancing Rabbit creek. No man, in my opinion, did so much to bring the question favorably before Congress, than yourself. I am ready to give my testimony to this effect any where, and at any time, when called on.

With great respect, your obedient servant,

WM. M. GWINN

Injunction bond.

Know all men by these presents, that we, Thomas Maney, R. P. Curran, and William Maney, are held and firmly bound unto Thomas J. Porter in the penal sum of eleven thousand four hundred and fifty dollars and cents, which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 29th of April, 1839.

The condition of the above obligation is such, that, whereas, the above bound Thomas Maney hath this day obtained from the court of chancery, holden at Franklin, in the State of Tennessee, a writ of injunction to enjoin the collection of a judgement recovered by the said Thomas J. Porter in the supreme court of errors and appeals, at Nashville, on the 11th Dec'r, 1838, against the said Thomas Maney, and William Maney, and Robert P. Currin, for the sum of five thousand seven hundred and three dollars and 71 cents, and the further sum of $17 04½, costs of suit.

Now, if the said Thomas Maney shall prosecute said injunction with effect, or in case the same shall be dissolved, he will pay to the said Thomas J. Porter all such costs and damages as he may sustain by the wrongful issuance of said injunction; and also the whole, or such part, of said judgement as the injunction may be dissolved for, and shall moreover prosecute his said bill with effect, or, on failure therein, shall pay

all such costs as may be adjudged by the court, upon a final hearing of said cause, and pay such costs as may be decreed upon the final hearing; then the above obligation to be void—otherwise, to remain in full force and effect.

THO. MANEY, [SEAL.]
R. P. CURRIN, [SEAL.]
WILLIAM MANEY, [SEAL.]
By R. H. W. BOSTICK.
His atto. in fact.

Appeal bond.

Know all men by these presents, that we, Thomas Maney, R. P. Currin, William Maney, and W. L. Murfree, are held and firmly bound unto Thomas J. Porter in the penal sum of thirteen thousand and thirty-one $\frac{12}{100}$ dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, ex'rs, &c.

Witness our hands and seals this 30th day of April, A. D. 1841.

The condition of the above obligation is such, that, whereas, the said Thomas Maney filed his bill of complaint in the court of chancery, holden at Franklin, against the said Thomas J. Porter, on the hearing of which a decree was rendered in favor of said Thomas J. Porter, against the said Maney and his securities in the injunction bond, to wit, Robert P. Currin and William Maney, for the sum of six thousand and fifteen $\frac{56}{100}$ dollars; and from which decree the said Maney prayed and obtained an appeal to the supreme court of errors and appeals at Nashville. Now, if the said Maney shall prosecute said appeal with effect, and perform the judgment, sentence, and decree of the supreme court, and pay such part or portion of the above judgment, or all of said judgment, if the said supreme court shall so order and decree, then this obligation to be void; else to remain in full force and virtue and effect.

THO. MANEY, [SEAL.]
R. P. CURRIN, [SEAL.]
WM. MANEY, [SEAL.]
W. L. MURFREE. [SEAL.]

STATE OF TENNESSEE:

This is to certify that the foregoing is a true and faithful transcript of the record and proceedings had in the cause heard and determined in the court of chancery, at Franklin, in the State aforesaid, wherein Thomas Maney was complainant, and Thomas J. Porter defendant, and the same contains all the evidence produced and read on the hearing of the cause, either on behalf of compl't or defendant.

In testimony whereof, I, Benjamin Litton, clerk and master of said court, have hereto set my hand, and affixed the seal of said court, at office, this 27th day of June, A. D. 1841. [SEAL.]

BENJ. LITTON.

Bill of cost.

State tax - - - - - -		$2 50
Benj. Litton, clerk. Bond, &c., 33; 1 subpœna, 75; 1 copy of bill, 7 00; 4 affidavits, 72; order for injunction, 25; notice to dissolve injunction, 25; overruling same, 25; order, 25; decree, 25; 1 commission, 1 00; taking 1 deposition, 6 27; copy of bill, 7 00; appeal and bond, 75; taxing cost, 25; 3 continuances, 75; rules on rule docket, 30; enrolling bill, 7 00; do. answer, 11 90; replication, 18; decrees, 40. Postage paid - -	$40 26	
Transcript of record - - - -	22 40	
		62 66
Sheriff B. W. Porter, executing 1 subpœna, 62½ -		62½
		$65 78½

And now, at a supreme court of errors and appeals, began and held at the court house, in the town of Nashville, on 1st Monday in December, A. D. 1841—Present, the honorable Nathan Green, William B. Reese, and William B. Tinley, judges, &c.—the following order was made, to wit:

THOMAS MANEY, compl't,
vs.
THOS. J. PORTER, def't. } In equity.

Upon motion of counsel, suggesting the incompetency of one member of the bench from sitting on the hearing of said cause, it is ordered by the court that the same be continued till the next term.

And now, at a supreme court of errors and appeals, began and held at the court house, in the town of Nashville, on 1st Monday in December, A. D. 1842—Present, the hon'ble Nathan Green, William B. Reese, and William B. Tinley, judges of said court—the following certificate was ordered to be made out and presented to the governor of the State of Tennessee, &c., to wit:

To his excellency JAMES C. JONES:

Whereas, by an act of the general assembly of the State of Tennessee, passed at its session 1835, chap. 68, sec. 1, it is made the duty of the supreme court of errors and appeals, when there are any causes in which, from connection, by affinity or consanguinity, or, from having been of counsel, or from having presided in the court below, they, or either or any of them, are disqualified to preside on the hearing of the same, to certify the cause or causes on the docket to be so heard.

We, therefore, hereby certify that William B. Reese, esq., one of the judges of the supreme court of errors and appeals of the State of Tennessee, is, from relationship to one of the parties, incompetent to sit on the trial of the same, to wit: the case of Thomas Maney against Tho-

mas J. Porter, the case of H. B. Porter against William Porter, and the case of Samuel H. Peake against Nimrod Porter.

NATHAN GREEN,
WM. B. REESE,
W. B. TINLEY. } *Judges, &c.*

Upon which the Governor of the State appointed Charles Ready, esq., special judge, as appears from the following commission, to wit:

James C. Jones, Governor of the State of Tennessee, to all who shall see these presents, greeting:

Whereas, it has been certified to me by the judges of the supreme court of errors and appeals, that William B. Reese, esq., one of the judges, is incompetent to preside on the hearing and determination of the following causes now pending at the present term of said court, to wit: Thomas Maney vs. Thomas J. Porter, H. B. Porter vs. W. Porter and Samuel H. Peake vs. N. Porter. Now, therefore, I, James C. Jones, governor as aforesaid, by virtue of the power and authority in me vested, do hereby commission Charles Ready, esq., special judge, to preside on the hearing and determination of the above causes, conferring on him all the powers, privileges, and emoluments thereunto appertaining.

In testimony whereof, I have hereunto set my hand, and caused the [L. S.] great seal of the State to be affixed, on this 9th day of January, A. D. 1843.

JAMES C. JONES.

By the Governor:
JNO. S. YOUNG, *Secretary.*

STATE OF TENNESSEE:

I certify that Charles Ready, esq., this day appeared before me, and took the several oaths prescribed by the constitution and laws, as a special judge of the supreme court, by virtue of the within commission.

Given under my hand, this 9th day of January, 1843.

NATHAN GREEN,
One of the judges of the supreme court, &c.

And afterwards, to wit: on the 15th day of May, 1843, being a continuation of the Dec'r term, 1842—present, the hon'ble Nathan Green, William B. Tinley, and Charles Ready, special judge, the following decree was entered in the words and figures following, to wit:

THOMAS MANEY, compl't,
vs.
THOMAS J. PORTER, deft. } In appeal, Dec'r term, 1842–'3.

Be it remembered that, on a former day of this term, and also on this day, viz: the 15th day of May, 1843, this cause came on to be finally heard before the hon'ble Nathan Green and William B. Tinley, judges of the supreme court, and Charles Ready, special judge of said court,

sitting in the room of William B. Reese, who was incompetent from relationship to Thos. J. Porter, one of the parties. Upon the transcript of the record from the chancery court at Franklin, from which court this cause came by appeal, and upon the bill, answer, replication, exhibits, and proofs, and in presence of counsel for both parties, by whom the cause was argued, whereupon it appeared to the court, that on the 17th of December, 1835, the said complainant, Thomas Maney, made and entered into a contract with the said Thomas J. Porter, which is in the words and figures following, viz:

CHICOPA, MISSISSIPPI, *Dec'r 17th*, 1835.

This article of contract and sale between Thomas J. Porter, of Columbia, Tennessee, of the first part, and Thomas Maney, of Franklin, Tennessee, of the second part, witnesseth: that, whereas by contract, dated 7th February, 1835, Charles Fisher, of North Carolina, has conveyed to the said Thomas J. Porter, ten sections of land, and William M. Gwinn, by contract, dated 10th Nov., 1835, has conveyed to the said Porter 15 sections of land, making 25 sections, to come out of a contract or contracts said Fisher and Gwinn have made with certain Choctaw Indians for their claims to land under the 14th article of the late Choctaw treaty, a copy of said contract of Fisher and Gwinn to Porter, being furnished to said Maney; and whereas, by a contract this day made between said Porter and Maney, the said Porter has, for a valuable consideration, sold to said Maney an equal and undivided one-half of said contract of 25 sections, reserving, and not selling in this contract with said Maney, the locations spoken of in said contract of Fisher and Gwinn, as being located in township 24, range 8 west, of 12 sections. Therefore, for the consideration aforesaid, the said Porter has, and by virtue of this instrument does sell, and convey to said Maney, one-half of said 25 sections, or an undivided interest of one half in the whole of said 25 sections by quit claim; the said Porter not guaranteeing or to be bound by any manner of recourse in law or equity, but for the consideration, quit claims to said Maney the interest aforesaid, with all the advantages arising under the same from the said Fisher and Gwinn. Witness my hand and seal,

THOMAS J. PORTER. [L. S.]

That as the consideration for said contract on said Porter's part, said Thomas Maney made and executed to him his two bills single, each for $5,000, payable to said Porter, and dated 17th Dec'r, 1835, and due one in twelve months, and the other two years after date, and delivered them to said Porter. That afterwards, about the 4th October, 1836, the said parties, upon the application of said Maney to said Porter, rescinded the said contract as to one-half of said lands, and said consideration; and thereupon the said Maney executed to said Porter his bill single for five thousand dollars, payable in eight months from said 4th Oct., 1836; and said Maney also reconveyed to said Porter, at the same time, one half of his right or interest in said lands so acquired as above. That

when said last mentioned bill single, became due, and payable according to its tenor and effect, the said Maney failed and refused to pay the same; whereupon, said Porter brought suit against him in the circuit court of Williamson county, and obtained judgment against him in said court on said bill single, from which judgment an appeal was taken by said Maney to this court, where, at its December term, 1838, and on the 11th day of said month, the said judgment was affirmed against the said Maney, and judgment given against him and his securities in appeal, viz. William Maney and Robt. P. Currin for the sum of $5,703 79 cents, and costs the further sum of $17 41½ cents. Upon which an execution issued, returnable to the 1st Monday in June, 1839, to enjoin which judgment and execution this bill was filed. It further appeared to the court that all the matters of fraud and misrepresentation charged in the bill were fully met and repelled by the answer, and that there was no sufficient proof to sustain said allegations. It further appeared to the court that the claims of the Indians to lands in the State of Mississippi and Alabama, referred to in the contract above recited, arose under the 14th article of the treaty of Dancing Rabbit creek, made between the United States of America on the one part, and the Choctaw nation, or tribe of Indians, on the other, made on 15th of September, 1830, if such claims arose at all, and that such claims might well be valid, and vest in the Indian or Indians a transferrable or assignable interest in such lands, and that they, such Indians, might well assign and transfer for a valuable consideration to white men, citizens of the United States, the whole or a portion of their interests in such lands, the acts of Congress regulating the intercourse with Indians and Indian tribes notwithstanding. And it appearing further, that Charles Fisher, William M. Gwin, and the persons, claiming to have contracts with such Indians for the sale of the portion of their interest in such lands, did, by contract with the said Porter, (the said Fisher by contract, dated 7th day of February, 1835, and the said Gwinn, by contract dated the 10th day of Nov., 1835,) transfer to the said Thomas J. Porter the first ten and the other fifteen sections of said lands, being a portion of their interest therein so acquired from said Indians, as stated by said Gwinn and Fisher. It further appeared to the court, that one-half of the lands or interest in lands thus acquired by said Porter, was the subject matter of contract first abovementioned between said Porter and Maney. But it appearing also, that the said Porter was not, and did not purport to be, or hold himself out to said Maney to be, one of the original contractors for said lands with said Indians, and that said Maney had full knowledge of this fact at the time of his contract with said Porter, and that he, said Maney, had or might have had the same information in regard to the origin and nature of said contracts that Porter had, and that the said Porter has not made, and did not make, any warranty of title to said lands or interest in lands, but made said contract and sale without recourse on him in law and equity, in case of failure of title; and the court being of opinion, that said Maney had no right to call on said Porter to exhibit his title or the titles of the Indians, or the contracts of the Indians with

Gwinn and Fisher, further than the same were exhibited at the time of the contract with Maney, as alleged in Porter's answer; and that the rule of *caveat empler* applies under the circumstances between the parties; and the court being further of opinion, that the said contract was not executed under a mutual mistake between the parties, in such manner as that a court of equity could give relief therein, especially under a bill to rescind an executed contract, and that there might well be a valuable subject matter about which said parties were contracting (though whether the same did in fact exist or not, the court expresses no opinion, no contracts with the Indians being produced before them,) and that therefore the same was not founded on a *bubble*, but was a valid contract, and is obligatory on the parties thereto. Whereupon, it is ordered, adjudged, and decreed by the court, that the decree of the chancellor be in all things affirmed, and that the complainant's bill be dismissed; that the injunction heretofore granted in this cause be dissolved, and that the said defendant, Thomas J. Porter, recover of the complainant, Thomas Maney, and his securities in the appeal bond, Robert P. Currin, William Maney, and William L. Murfree, the amount of the decree in the court below, viz. the sum of six thousand and five hundred and fifteen dollars and fifteen cents, together with six per cent. interest thereon from the 28th day of April, 1841, to this day, the sum of $798 06, making together the sum of seven thousand three hundred and thirteen dollars and fifty-six cents; and also the costs of this court, and the costs of the court of chancery, and also the costs of the suit at law, for which an execution or executions may issue as at law.

And on a subsequent day of said court, the following entry was made, to wit:

THOMAS MANEY,
vs.
THOS. J. PORTER.

From the decree and judgment in this cause, the complainant, Thomas Maney, and his securities, pray for a writ of error to the Supreme Court of the United States, to be holden at Washington, on the 2d Monday in January next, and having produced a writ of error, and given bond and security, which have been allowed according to the act of Congress, and also lodged a copy of said writ of error, and the original citation, a copy of which has been acknowledged to be received by the attorney for Thomas J. Porter; it is ordered, that the original writ of error and citation, together with a copy of the record in this cause, be made out by the clerk of this court, and transmitted to the said Supreme Court of the United States.

Bond and security, &c.

Know all men by these presents, that we, Thomas Maney, William Maney, William L. Murfree, and Henry Halfacre are held and firmly bound unto Thomas J. Porter in the sum of fourteen thousand six hundred and twenty-six dollars; for the payment of which sum, well and

truly to be made to said Thomas J. Porter, we, jointly and severally, bind ourselves, our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals, this 17th day of May, 1843.

The condition of the above obligation is such, that whereas, on the 15th day of May, 1843, a judgment or decree was rendered in a certain cause depending in the supreme court of errors and appeals of the middle division of the State of Tennessee, wherein Thomas Maney was complainant, and the said Thomas J. Porter was defendant, against the said Thomas Maney and Robert P. Currin, William Maney and William L. Murfree, his securities, for the sum of seven thousand three hundred and thirteen $\frac{56}{100}$ dollars and costs of suit; and whereas the said Thomas Maney and his said securities have prayed and obtained a writ of error to remove the said cause to the Supreme Court of the United States, to be holden at Washington, on the second Monday in January next.

Now, therefore, if the said Thomas Maney, Robert P. Currin, Wm. Maney, and Wm. L. Murfree, shall prosecute their writ to effect, and answer all damages and costs if they fail to make their plea good, then this obligation to be void, otherwise to be and remain in full force and virtue.

THO MANEY, [SEAL.]
WM. L. MURFREE, [SEAL.]
WM. MANEY, [SEAL.]
HENRY HALFACRE, [SEAL.]

Approved, N. GREEN, *Judge, &c.*

STATE OF TENNESSEE:

I, J. P. Clark, clerk and master of the supreme court of errors and appeals of said State, at Nashville, do hereby certify that the foregoing is a full and true transcript of the record and proceedings had in the cause of Thomas Maney, complainant, against Thomas J. Porter, defendant, in said court, as the same appears on file in my office, as well as the original writ of error and citation filed in said cause.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at office in Nashville, this 13th day of June, A. D. 1843, and 67th year of the independence of U. States.

J. P. CLARK.

THE UNITED STATES, *8th circuit, district of Middle Tennessee.*

To Thomas J. Porter, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors and appeals for the middle division of the State of Tennessee, wherein Thomas Maney, Robert P. Currin, Wm. L. Murfree, and Wm. Maney, are plaintiffs in error, and Thomas J. Porter is defendant, to show cause, if any there be, why the decree and judgment rendered against the said Thomas J. Maney and others,

in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Nathan Green, one of the judges of the supreme court of errors and appeals, of the State of Tennessee, this 16th day of May, in the year of our Lord one thousand eight hundred and forty-three.

NATHAN GREEN,
One of the judges of the supreme court of Tennessee.

I acknowledge the receipt of a copy of this citation.

E. H. GINNES,
May 17th, 1843. *Atto. for Porter.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the supreme court of errors and appeals for the State of Tennessee, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, between Thomas Maney, complainant, and Thomas J. Porter, defendant, a manifest error hath happened, to the great damage of the said Thomas Maney and Robert P. Currin, Wm. L. Murfree, and Wm. Maney, his securities, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the 2d Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this 2d Monday of January, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the 67th.

JACOB McGAVOCK,
Clerk of the circuit court for the district of Middle Tennessee.

Allowed, the plaintiffs in error entering into bond with sufficient sureties to perform such decree as the Supreme Court of the United [States] shall pronounce in the cause.

Given 16th May, 1843.

NATHAN GREEN,
One of the judges of the supreme court of Tennessee.

Filed, 1844.